STUDIES IN DHARMAŚĀSTRA

Edited by
RICHARD W. LARIVIERE

26

FIRMA KLM PRIVATE LIMITED

In 1976 the late and lamented Kanailal Mukhopadhyay asked Dr. Richard Lariviere to undertake the task of collecting some original articles dealing with the subject of *dharmaśāstra*. It was his intention that the publication of these articles by his firm might contribute to the continued interest in this subject. The range of topics covered in these few articles is considerable, treating such things as :

—epigraphic records of *vyavahāra*

—missionary accounts of the Hindu legal system

—an actual decision of a Hindu court of the 18th century

—an analysis of the institution of the world renouncer in the *varṇāśrama* system

—a study of the ritually "polluting" aspects of rivers

—and an investigation of what the Hindu legal texts have to say on the subject of dowry.

It is hoped that the appearance of this book, even after unavoidably lengthy delays, will fulfill the original intention of Śrī K. L. Mukhopadhyay. Much to be regretted is the fact that he was unable to see the final publication of this volume.

Published by :

Firma KLM Private Limited
257-B, Bepin Behari Ganguly Street
Calcutta-700 012

294.5926
LAR

First Published : Calcutta, 1984

© Contributors

294.5926
L325P

Price . Rs. 75·00

6400

Printed by :

Dulal Das Gupta
Bharati Printing Works
15, Mahendra Sarkar Street
Calcutta-700 012

THIS BOOK IS DEDICATED TO THE MEMORY OF
KANAILAL MUKHOPADHYAY. IT WAS HIS IDEA
TO COMPILE THIS COLLECTION, AND
IT IS MUCH REGRETTED THAT
HE COULD NOT FINALLY
SEE ITS APPEARANCE
IN PRINT.

Richard W. Lariviere

CONTENTS

Introduction—Richard W. Lariviere 1

Glimpses of Ācāra and Vyavahāra in Early Indian Literary and Epigraphic Records—D. C. Sircar 3

Father Bouchet's Letter on the Administration of Hindu Law—Ludo Rocher 15

A Sanskrit Jayapattra from 18th Century Mithilā —Richard W. Lariviere 49

Renouncer and Renunciation in the Dharmaśāstras —Patrick Olivelle 81

Legal and Symbolic Significance of the "Menstrual Pollution" of Rivers—Richard Salomon 153

What the Dharmaśāstra has to say about Dowry —J. Duncan M. Derrett 179

Cases Cited 195

Index 196

INTRODUCTION

The articles in this collection are not the result of a conference, nor do the articles all treat a similar theme or idea. What is the purpose of such a collection, then ? Let it be considered a paean—even if a humble one—to the diversity and importance of the field of *dharmaśāstra* for so many aspects of the history of Indian society. The study of this field seems in recent years to have been pursued with less widespread enthusiasm than in previous years. The days when the likes of Gharpure, Mandlik, Jolly, Jayaswal, Jha and Kane ensured that nearly every volume of an indological journal contained something on the subject of *dharmaśāstra* are gone. This is true not only in the realm of modern scholarship, but in the traditional circles as well, as witnessed by the absence of *dharmaśāstrīs* in the centers still famous for traditional learning.

There can be no accounting for the vogues of scholarship, but any attempt at explaining the relative neglect of the subject of *dharmaśāstra* cannot claim that the field is exhausted, or that it is not "relevant" to any other disciplines. (A more likely explanation may lie in the imposing vastness and highly technical nature of the corpus.) Indeed, the field is very rich.

One of the recurring questions which one encounters in several fields of classical Sanskrit literature is the extent to which the prescriptions and descriptions are based on actual practice or on the writers' idealized norms. The difficulty in dealing with this question is that it is so hard to find quotidian data to confirm or contradict the descriptions of the text. The papers by D. C. Sircar, Ludo Rocher, and myself are all attempts to provide such data. Sircar draws upon epigraphic data from the 6th, 7th, 8th, 11th, 12th and 13th centuries as well as some literary sources. Rocher offers the first complete English translation of a French Jesuit's description of the legal system as he knew it in the late 17th and early 18th centuries. This letter has long been of interest and importance for the history of Hindu legal administration. My paper deals with the last days of Hindu legal procedure before the British changed it forever.

Legal procedure is only one aspect of the richness of material in the field of *dharmaśāstra.* Patrick Olivelle, Richard Salomon, and J. D. M. Derrett treat social and religious questions which continue to be important in contemporary Indian society. Olivelle's paper is of particular interest in that he has examined thoroughly the place of the renouncer in *dharmaśāstra* and in so doing he has made some discoveries which radically alter the conventional understanding of the history of the *varṇāśrama* system so fundamental to Indian society. His work is a clear example of the importance of *dharma* literature for a proper understanding of social institutions. The papers by Salomon and Derrett are of importance for the history of present-day practices both religious and social.

This small collection is intended to be an encouragement for the cultivation of the fertile field of *dharma* literature. It is a field uniquely able to benefit from the efforts of many disciplines. Historians, philologists, anthropologists, sociologists and scholars of comparative law and religion have common ground to work here, and only through the combined and varied approaches of these disciplines can the maximum understanding of what these texts can tell us be gleaned.

April, 1981 Richard W. Lariviere

D. C. SIRCAR, Calcutta

GLIMPSES OF ĀCĀRA AND VYAVAHĀRA IN EARLY INDIAN LITERARY AND EPIGRAPHIC RECORDS

In an essay on the 'Pitfalls in the Study of Early Indian Society', we had occasion to observe that the state of social life suggested by the Dharmaśāstra, Arthaśāstra and Kāmaśāstra works is theoretical to a considerable extent,[1] and that this seems to be admitted in the passage *śāstrārthān vyāpino vidyāt prayogāṁs tv ekadeśikān*[2] speaking of the wide scope of the Śāstra and the limited nature of its application. Casual references to such matters in literary and epigraphic records appear to be less theoretical. A difficulty with early literary works is, however, that the date and place of composition of most of them are not beyond dispute so that it is not possible to locate the customs and practices mentioned in any particular work in definite periods and localities. It is also difficult to determine whether the practices indicated in a book of known date and origin were also in vogue in different parts of the vast country as well as in the earlier and later periods. Moreover, India is a wide territory inhabited by numerous tribes of Aryan and Non-aryan origin, and since their individual cultures differ considerably, it is difficult to find out the nature and extent of the result of contacts among different cultures.[3]

In order to indicate the nature and importance of references in literary works and to facilitate their comparison with the specimens of information in epigraphic literature, we are inclined to draw attention to two cases only. Pali Buddhist literature offers us interesting information about administration of justice among the Licchavis.[1] We are told that a culprit, when he could not be released by a judicial officer trying his case, had the matter submitted to the next higher officer till it ultimately reached the *Rājan* who could punish him in accordance with the *Praveṇipusṭaka* or Book of Precedents. The officers, through whose hands the case had to pass, were (1) the *Viniścaya-mahāmātra*, (2) the *Vyavahārika*, (3) the *Sūtradhāra*, (4) the *Aṣṭakulaka*, (5) the *Senāpati*, and (6) the *Uparāja*, with the *Rājan* at the end of the chain. Of course, it is difficult, as we observed elsewhere,[2] to believe that all criminal cases passed through such a long chain especially in view of the fact that justice is found to have been administered summarily according to some stories found in the Pali literature.[3]

---

[1] Sircar, *Some Problems of Indian History and Culture*, Ahmedabad, pp. 47.

[2] Vātsyāyana's *Kāmasūtra*, VI, 9. 38.

[3] Sircar, op. cit., pp. 44-45.

Equally interesting is a story in the *Daśakumāracarita* (Ch. II), composed by Daṇḍin about the seventh century A.D. In it, a valuable article in the possession of a prostitute was found to be stolen property, and the king demanded the name of her lover from whom she had received it. Although the woman protested and pointed out that divulging the names of lovers was not the custom of her class, she was compelled, under threat of punishment, to give out a name, and the name was that of an innocent merchant which she mentioned under the instigation of a wicked rival of the trader. The king at once ordered the death of the supposed culprit ; but the wicked trader pointed out to him, "Sire, there is a privilege granted to the merchants by the Maurya that they should not be punished with death in this kind of crimes. In case you are angry, you may banish this wretch from the country after confiscating his entire property."[1]

---

[1] 1. *Sumaṅgalavilāsinī*, Vol. II, p. 519 ; Malalasekera, *Dict. P. P. Names*, Vol. II, p. 781.

[2] 2. *Studies in the Political and Administrative Systems in Ancient and Medieval India*, p. 240, note.

[3] 3. See *Jātaka*, Vol. IV, No. 465 *(Bhaddasāla)*, which describes speedy retrial of a case by Bandhula for the satisfaction of the litigants at the court who were complaining about the unjust decision of the judges.

The story shows that there were certain crimes for which the punishment of traders was lesser than that of the ordinary criminals, one of these being the possession of stolen property, which was generally regarded as equal to theft. For this crime, the punishment of an ordinary criminal was apparently death, though a trader convicted of it enjoyed the privilege granted by the Maurya, very probably Candragupta Maurya (c. 324-300 B.C.), and was subject to the maximum punishment of banishment from the kingdom or area and confiscation of his property by the king. The reason for this concession is no doubt the fact that often a merchant might have to accept a stolen article from a person either in mortgage or for sale because the latter would solemnly declare the object to be his own, and it was difficult for a trader to conduct any business if all such objects were suspected to be stolen property. A point of considerable interest is that the concession granted by Candragupta Maurya, who ruled over wide areas of India and its neighbourhood from the city of Pāṭaliputra (modern Patna in Bihar) about the close of the 4th century B.C., was in vogue in South India where Daṇḍin wrote about the seventh century A.D., i.e., about a millennium afterwards.

There are some inscriptions recording concessions granted by kings in favour of traders apparently on receipt of money. Such concessions often relate to the prevailing conditions regarding *ācāra* and *vyavahāra*. The earliest and biggest of this kind of records is the charter[2] issued in the year 592 A.D. by a ruler named Viṣṇuṣeṇa or Viṣṇubhaṭa, who probably flourished in the Gujarat region as a subordinate of the Kalacuri king

---

[1] Sircar, *Stud. Pol. Adm. Syst. Anc. Med Ind*, pp. 274ff. The passage runs : *ārya, Maurya-datta eṣa varo vaṇijām īdṛśeṣv aparādheṣunāsti asubhir abhiyogaḥ ; yadi kupito 'si hṛtasarvasvo nirvāsanīyaḥ pāpa eṣa iti.*

[2] *Ep. Ind.*, Vol. XXX, pp. 166ff. ; Sircar, *Stud. Pol. Adm. Syst. Anc. Med. Ind.*, pp. 176ff.

Śaṅkaragaṇa. It bears an endorsement of a chief named Avanti dated in 605 or 676 A.D. The document is called *sthiti-pātra*, *ācāra-sthiti-pātra*, *anugraha-sthiti-pātra*, *sthiti-vyavasthā* and *sthiti-pātra-vyavasthā*, in which the word *pātra* seems to have the sense of *patra* (document). Some of the *ācāras* are also mentioned in the copper-plate grant[1] of Bhogaśakti discovered at Anjaneri in the Nasik District of Maharashtra and issued during the early years of the eighth century A.D. An *ācāra-vyavasthā* is also embodied in the Lakshmeshwar Kannaḍa inscription[2] (c. 725 A.D.) of *Yuvarāja* Vikramāditya II of the Cālukya house of Bādāmi ; but the record is small and damaged. Reference may again be made to a Kannaḍa record[3] of 1050 A.D. from Sudi in the Dharwar District, Karnataka, which registers the *śāsana-maryādā* granted to eight Śresṭhins and eighty householders of the village, whose shops and households were granted immunity from all imposts including the fixed land tax for two *śrāhe* (years) after which they would have to pay the usual dues.

Viṣṇuṣeṇa-Viṣṇubhaṭa's charter, referred to above, says that the merchants of Lohāṭā or Lohāṭakagrāma, whence the record was issued, approached the ruler with the request of being favoured with his *ācāra-sthiti-pātra* which they might utilise in protecting and favouring their own people *(loka-sangrah-ānugrah-ārtha)*, and the traders were actually favoured with the ruler's *sthiti-pātra* used in the protection and settlement of the people of his territory *(janapadasya......parirakṣaṇa-saṉniveśanāya)*. This *sthiti-pātra*, also mentioned by several other names as noted above, is a list of customary laws though a few may have been concessions to the traders. Viṣṇuṣeṇa-Viṣṇubhaṭa also says that he further approved of other *ācāras* that were not mentioned in the document but were handed down from ancient times. Avanti's endorsement speaks of his ascent to the *sthiti-*

---

[1] *Ep. Ind.*, Vol. XXV, pp. 225ff.

[2] See ibid., Vol. XIV, pp. 190-91.

[3] Cf. ibid., Vol. XV, pp. 77ff.

vyavasthā granted by Viṣṇubhaṭa (Viṣṇuṣeṇa) to the community of merchants residing at the village of Lolāṭaka and states that people conducting their respective trade and following the said *sthiti-pātra-vyavasthā* should not be disturbed in any way.

The list in Viṣṇuṣeṇa-Viṣnubhaṭa's grant contains no less than 72 regulations or customary rules which are full of obscure and technical words and are not all of them easily intelligible. The more easily intelligible ones may be quoted as follows.

1. The property of one who died without leaving an heir was not to be confiscated by the state.

2. A royal official was not to take recourse to *ummara-bheda* (i.e., entering the house of one who is abroad).

3. Nobody was to be jailed for mere suspicion of having committed a crime.

4. The wife was not to be arrested for her husband's guilt.

5. A law-suit had to be taken up for disposal only in the presence of both the complainant and the defendant.

6. When a subordinate chief, an officer or an envoy of the king came to a village on official business, the villagers were not to be compelled to supply beds or couches, seats and boiled rice for them.

7. The said persons were not to use the bullock-carts of the villagers for their travel in and outside the village.

8. Periodical offerings to be made to the king were to be brought to the palace or to the office engaged in collecting them, but were not to be deposited with anybody else (i.e., not to a watchman, a policeman, etc.).

9. A formal complaint and not mere wailing was to be accepted by the court for taking up a case for trial.

10. A *sārikā* bird was not to be allowed to stand as a witness in cases of defamation and assault.

11. The drawers of water for the irrigation of fields and the manufacturers of blue dye from the indigo plant had to be exempted from *viṣṭi* (free or forced labour).

12. People engaged in filling up the cisterns at public places

with water and also milkmen were not to be recruited for free labour on the king's behalf.

13. Persons engaged in work at home or at their shops were not to be summoned to the court of law by means of a seal-ring or a letter or by a messenger unless they were involved in a criminal case.

14. Persons engaged in such work as a sacrifice or a marriage ceremony should not be summoned to court to refute the charges brought against them.

15. In connection with a written complaint about the realisation of borrowed money, the debtor, when he was not in wooden or metal handcuffs because of security having been furnished for him by somebody, was to enjoy the protection of the court.

16. Cultivators coming out of their areas for sowing seeds during the rainy season were not to be apprehended or engaged by the king or landlord in free labour.

17. If an official of the Uttarakulika class was absent from the court even when thrice summoned by a court peon or constable, he should pay a fine of Rūpakas 2¼ including the *dhārmika* (probably meaning 'even if there was any good reason for absence' or an extra levy in the name of some religious purpose).

18. If the clerk, who had to write down the statements of cases in the court of law, was absent from the court after midday, he had to pay a fine of Rūpakas 6¼ including the *dhārmika.*

19. No pretext of the Uttarakulika officials, absent from the court of law after midday, was to be accepted.

20. For *mudrāpacāra* (the crime of using counterfeit coins or the misuse of the royal seal) the fine was Rūpakas 6¼ including the *dhārmika.*

21. For *ullambana* (?) and *karṇa-troṭana* (bruising someone's ears), the fine was Rūpakas 27.

22. The fine for abuse and assault was Rūpakas 6¼.

23. The fine for infliction of a wound was Rūpakas 48.

24. The fine for one's cow grazing in another's cornfield

was Rūpaka $\frac{1}{20}$; but for one's she-buffalo doing the same, the amount of fine was double, i.e., Rūpaka $\frac{1}{10}$.

25. When one was detected with a vesselful of illegally distilled wine, his fine was Rūpakas 5, though when it was the first offence and was a *dhārmika* case, the fine was Rūpakas $2\frac{1}{2}$ (or, the *dhārmika* levy was Rūpakas $2\frac{1}{2}$) ; however, when a man was let off for the first offence but was caught on a second occasion, his fine was double, i.e., Rūpakas 5 (or, probably Rūpakas 10).

26. The fine for one caught while distilling liquor was Rūpakas 3 ; but in a *dhārmika* case, the fine was (or, when *dhārmika* was levied, it was) $1\frac{1}{4}$ silver coins though 2 *cāturthas* ($\frac{1}{2}$ of the standard liquid measure) of wine had to be paid as *rāj·ārghikā* (the king's share).

27. While measuring wine in *cāturthas* or quarter-measures at the royal store-house with a measuring pot in hand, the wine-distiller was required not to divert his attention to any other work.

28. The producer of blue dye should pay the tax for his indigo factories at the rate of Rūpakas 3.

29. The tax for a sugarcane plantation was Rūpakas 32, but Rūpakas $2\frac{1}{4}$ were to be paid in a *dhārmika* case (or, as an extra levy).

30. Half of the above (i.e , Rūpakas 16) was the tax for a ginger plantation.

31. The tax for a manufactory or oil mill was Rūpakas 3 ; but Rūpakas $1\frac{1}{4}$ had to be paid if the case was a *dhārmika* one (or, as an additional levy).

32. Merchants staying in the region only for the rainy season (when their business was dull) should not pay any entrance fee, but have to pay the exit tax.

33. For a boat (or carriage) full of vessels (or articles), the fee for crossing the boundary of the district or kingdom was Rūpakas 12 ; but Rūpakas $1\frac{1}{4}$ had to be paid if the case was a *dhārmika* one (or, as an extra cess).

34. For a load carried by a buffalo or a camel, the tax was

Rūpakas 5¼ including the *dhārmika* ; for one carried by a bullock, the tax was Rūpakas 2½, but Rūpakas ¼ had to be paid if the case was a *dhārmika* one (or as the *dhārmika* levy) ; for a load on a donkey the tax was Rūpakas 1¼ including the *dhārmika.*

35. The tax for bundles suspended from loops at the ends of a hanger carried on shoulders by a man was Rūpakas 5 excluding Rūpaka ¼ for the hanger.

36. The tax for articles weighing 100 Palas (400 Tolās or 5 seers) was Rūpaka $\frac{1}{10}$.

37. The tax for a boat full of bamboos was Rūpakas 6 including the *dhārmika.*

38. There was no tax for paddy or grains carried by a person on his shoulders.

39. Only two handfuls of cumin seed, black mustard and coriander seed were allowed to be taken as samples from the sellers.

40. Ceremonies such as marriage, sacrifice, festivals and *sīmantonnayana* were not to be taxed.

41. If the procession of a bridegroom had to cross the boundary of the territory concerned to reach the house of the bride's father, it had to pay the crossing fee of Rūpakas 12 ; in case a *paṭṭaka* or passport had been taken for the crossing, Rūpakas 1¼ were to be paid as *dhārmika* instead of Rūpakas 12 (or, the extra levy of Rūpakas 1¼ was the nominal tax because of the passport).

42. The fee for crossing the border to be paid by a vehicle full of wine was Rūpakas 5 ; but Rūpakas 1¼ had to be paid if the case was *dhārmika* (or, as an additional levy).

43. The tax for strong liquors was 3 quarter-measures of the wine called *śīdhu.*

44. The dyers of cloth, the weavers and the shoe-makers (or retailers) had possibly to pay half the price of their articles sold in the countryside [during a particular period] as tax apparently per year in lieu of *viṣṭi* or free labour.

45. The free labour to be exacted from the blacksmiths,

carpenters, barbers, potters and others should be determined by the royal officials.

The above would give the reader some idea about the nature of the privileges granted to some merchants by a ruler of the Gujarat region about the close of the sixth century. The privileges enumerated would also throw some light on the *ācāra* and *vyavahāra* as prevailing in the age and area in question.

One set of the Anjaneri plates[1] of king Bhogaśakti, who ruled over the Konkana region and parts of Maharashtra including the Nasik District during the early years of the 8th century A.D., speaks of the recolonisation of a deserted township called Samagiripattana to which were added five other hamlets, the whole area being then invested in the town council formed by the merchants of the township. The said council of merchants was exempted from a number of obligations and was empowered apparently to collect fines for certain crimes at prescribed rates. It has been said that the merchants of Samagiri were permanently exempt from the payment of customs duties throughout the kingdom ; their property was not to escheat to the state in the absence of a male heir nor was there to be *umbara-bheda* (entry into their houses during their absence), and they were not to be compelled to provide accommodation or food to the state officials visiting their area on tour. The levies prescribed were Rūpakas 108 for outraging the modesty of a virgin ; Rūpakas 32 for adultery ; Rūpakas 16 for the mutilation of one's ear ; Rūpakas 4 for bruising one's head ; Rūpakas 108 for a merchant's son for adultery, though in the case of an attempt to commit adultery, the fine to be paid was Rūpakas 8 or 16 as determined by the City Elders (i.e., members of the city council of merchants).

The inscription, analysed below, also speaks of privileges granted by a king in favour of traders ; but the evidence in this case is of a somewhat different nature.

The Motupalli pillar inscription[2] (1244-45 A.D.) of the

---

[1] *Ep. Ind.*, Vol. XXV, pp. 237-38.

[2] See ibid , Vol. XII, pp. 188ff.

Kākatīya king Gaṇapati offers an interesting case of an Indian king granting privileges to sea-faring foreign merchants, i.e., traders who came from places outside his empire. The inscription engraved on a pillar of the *maṇḍapa* in front of the Vīrabhadrasvāmin temple at Motupalli on the sea-shore in the Bapatla Taluk of the Guntur District, Andhra Pradesh, is an *abhaya-śāsana* or 'an edict assuring safety', to foreign merchants trading by sea, whose vessels might be wrecked on the coast of Gaṇapati's territories. It is said that formerly the whole cargo of such ships, viz., gold, elephants, horses, gems, etc., became forfeited to the State, but that Gaṇapati proposed to levy nothing more than the fixed customs duties on the articles from the date of the record. The duties are specified in the epigraph as follows : (1) one in thirty on all items of export and import ; (2) for 1 Tulā of sandal—1 Pagoda and $\frac{1}{4}$ Fanam ; (3) for 1 Pagoda worth of camphor, Chinese camphor and pearls—$\frac{3}{4}$ and $\frac{3}{8}$ Fanam ; (4) for 1 Pagoda worth of rose-water, ivory, civet, camphor oil, copper, zinc, lead, silk-threads, corals and perfumes—$1\frac{1}{8}$ Fanams and $\frac{1}{8}$ Fanam (probably an amount varying between the two sums) ; (5) for 1 Pagoda worth of pepper—$\frac{3}{4}$ and $\frac{1}{4}$ Fanam ; (6) for 1 bale (?) of all kinds of silk—$5\frac{1}{2}$ Fanams ; and (7) for 1 lakh of arecanuts—1 Pagoda and $3\frac{1}{4}$ Fanams.

The word *tulā*, used to indicate the measure of sandal wood, was sometimes regarded as equal to 100 Palas, i.e. 400 Tolās (about 10 Pounds or 5 seers) or 500 Tolās ($6\frac{1}{4}$ seers) or 800 Tolās (10 seers).[1] The Pagoda (English name for the Gadyāṇa or Varāha, also called Hon) was a gold coin weighing 48 Ratis (about 88 grains) and Fanam (English for *Paṇa*) was a small gold coin of the weight of 5 or 6 grains.[2] Ten Paṇas (Fanams) were often regarded as equal to one Varāha or Gadyāṇa (Pagoda)[1].

---

[1] Sircar, *Early Indian Numismatic and Epigraphical Studies*, pp. 34-35. Wilson's *Glossary of Judicial and Revenue Terms* recognises Tulā as equal to 100 or 200 Palas=145 or 290 ounces troy.

[2] Sircar, *Studies in Indian Coins*, pp. 16-17.

An inscription[2] of 1173 A.D. belonging to the reign of Gāhaḍavāla Jayaccandra of Vārāṇasī and Kānyakubja records an ordinance issued by the Brāhmaṇas of the village council without any reference to the king or royal officers although the heavy punishment for culprits as mentioned in the document included not only certain kinds of harassment but even death. This throws some light on the responsibility of the public for the preservation of law and order. Records relating to this aspect of early Indian life have been discovered in large number in South India[3]; but the present epigraph shows that conditions in the North were practically similar to those prevailing in the South in early times.

The inscription in question says that the Brāhmaṇas, assembled at Lāhaḍapura, drafted a *sthiti* (ordinance) and made a *saṃvid* (agreement), as recorded in the epigraph, because they had been suffering from the depredations of certain unsocial elements that were determined to put them to shame. The Brāhmaṇas declared that the person who would plunder the village or would be guilty of mischief of any other kind committed to its inhabitants, such as the seizure of their cattle, should be killed at once, and his whole property should be confiscated, while his abettor should be expelled from the village and his house should be demolished. It is further said that the adviser of the chief culprit, i.e., the person behind the crime, should be ostracised and treated as a dog or ass or a Caṇḍāla. We have to remember in this connection that South Indian epigraphs show how village assemblies, guilds, temple trustees and caste elders often conducted criminal cases arising within their jurisdiction side by side with the courts of the kings and their governors and subordinates. It is well known that for theft and murder committed in a village, the Indian law-givers often held the land-lord of a village responsible for tracing the thief or murderer or otherwise for compensating the aggrieved party,[1] while we are also told that the property stolen in the village should be made good by its headman if the thief's footsteps could not be traced as going out of it, but that the whole village could be held responsible for compensation if the theft took place outside its residential quarters.[2]

---

[1] Sircar, *Early Indian Numismatic and Epigraphical Studies*, pp. 79-90.

[2] *Ep. Ind.*, Vol. XXXII, pp. 305ff.; cf. Sircar, *Studies in the Political and Administrative Systems in Ancient and Medieval India*, pp. 82ff.

[3] See T. V. Mahalingam, *South Indian Polity*, Chapter V (Law, Justice and Police), pp. 197ff., in which evidence of more than a hundred South Indian inscriptions has been cited.

---

[1] Cf. *Yājñavalkyasmṛti*, II. 271-72 ; *Ep. Ind.*, op. cit., pp. 307-08 ; Sircar, *Stud. Pol. Adm. Syst.*, pp. 86-87.

[2] See Kane, *Hist. Dharm..*, Vol. III, pp. 167-68.

LUDO ROCHER, University of Pennsylvania

FATHER BOUCHET'S LETTER ON THE ADMINISTRATION OF HINDU LAW

This paper provides a—first—complete translation into English of "a most interesting letter written by Father Bouchet in 1714 from Pondicherry to a great man in France".[1] Except for the first few paragraphs, the letter is entirely devoted to the administration of Hindu law. Although the letter has not remained unnoticed,[2] it has never been made available elsewhere than in its original setting : the *Letters édifiantes et curieuses* and their German and Italian translations.[3]

The author, Jean Venant Bouchet, was born at Fontenay-le-

---

[1] J. H. Nelson : *A Prospectus of the Scientific Study of the Hindu Law*, London : Kegan Paul, 1881, p 1188.

[2] J. H. Nelson repeatedly refers to it, especially in "Hindu Law at Madras," *Journal of the Royal Asiatic Society* n.s. 13, 1881, pp. 208-236. See at pp. 221-227 for a summary of contents, and pp. 227-229 for an evaluation. J. D. M. Derrett (C. H. Philips : *Historians of India, Pakistan and Ceylon*, London : Oxford University Press, 1961, p. 361 n. 21) refers to an "explanation of F. Bouchet's letter of 1714 in a light more consistent with orthodox theory," by L. C. Innes : *Examination of Mr. Nelson's Views of Hindu Law in a letter to the Right Hon. Mountstuart Elphinstone Grant Duff, Governor of Madras* (Madras 1882).

[3] The letter has been published in the following collections of *Lettres édifiantes et curieuses* : Paris, vol. 14, 1720, pp. 321-411 ; Paris, vol. 12, 1781, pp. 255-313 ; Paris, vol. 2, 1840, pp. 485-499 ; Paris, vol. 4, 1843, pp. 485-499 ; Lyon, vol. 7. 1819, pp. 152-188. I have used the 1840 edition, pages and columns of which are indicated in brackets in the translation ; I have compared the text with the earlier editions of 1720 and 1781. A German translation appeared in Joseph Stöcklein's *Der Neue Welt-Bott*, vol. I. 6, Augsburg 1728. pp. 87-92. This translation omits the passage : "If I am not mistaken, I have read somewhere,..." (p. 487a), up to "...I shall not go into it here" (p. 489b) ; it summarizes the remainder of the letter. I have not seen the Italian translation, in *Scelta di Lettere Edificanti*, vol. 6, Milan 1829, pp. 5-39.

Comte, France, on April 12, 1655.[4] He became a novice in the Society of Jesus on October 1, 1670. In 1688 he left for India, where he was put in charge of Trichinopoly and the surrounding area. Because of civil troubles in the city he established himself at Ahur, twelve miles south of Trichinopoly. He built a church, and carried on in grand style. In 1702 he was transferred from the Maduré mission to the Carnate mission, of which he became the Superior. He then lived at Tarkolan, in North Arcot District.

On November 6, 1703, Charles de Tournon, papal *legatus a latere*, arrived in Pondicherry, to investigate Jesuit practices. Sickness prevented him from visiting any part of the inland mission. However, until his departure in July 1704, he gathered data on the practices in question, notably from Charles Bertoldi of Maduré, and from Bouchet. In the meanwhile, on June 23, 1704, Tournon signed a decree condemning in sixteen points several usages permitted by the Jesuits; his decree was confirmed by the Holy Office on January 7, 1706. As a result, Bouchet was sent to defend the Jesuit methods to Rome, where he arrived in early July 1707. When his companion, François Laynez, had to return to India as the coadjutor of the bishop of Mylapore—and to become bishop there himself—, Bouchet carried on alone. He obtained from Pope Clement XI, by an *oraculum vivae vocis*, that the missionaries were to observe Tournon's decree only "insofar as the Divine glory and the salvation of souls would permit." Bouchet returned to India in 1709, satisfied with his success.

---

[4] The following biographical data are based on a variety of sources, in chronological order : Carlos Sommervogel : *Bibliothéque de la Compagnie de Jésus*, Brussels : Schepens, Paris : Picard, vol. 1, 1890, col. 1864-1866 ; —Auguste Jean : *Le Maduré. L'ancienne et la nouvelle mission*, Bruges : Desclée de Brouwer, 1894, vol. 1, pp. 132-136 ; —Adrien Ch. Launay : *Histoire des missions de l' Inde*, Paris : Douniol, 1898, vol. 1, p. xxiv ;—Adelhelm Jann : *Die katholischen Missionen in Indien, China und Japan*, Paderborn : Schöningh, 1915, pp. 412, 473-474, 480, 482 ;—Leon Besse : *Father Beschi, of the Society of Jesus*, Trichinopoly : St. Joseph's Industrial School Press, 1918, pp. 245-246 ;—Robert Streit and Johannes Dindinger : *Bibliotheca Missionum*, Aachen : Franciscus Xaverius Missionsverein, vol. 6, 1931, p. 2 ;—*New Catholic Encyclopedia*, New York : McGraw-Hill, vol. 9, 1967, p. 98 (V. Cronin).

However, on September 1, 1712, Clement renewed the Holy Office's decree of 1706. In a brief *non sine gravi*, of 17 September 1712, he reprimanded Laynez for failing to take action to carry out Tournon's decree. On July, 24, 1715, the cardinal prefect of propaganda sent the brief and the decree of 1706 to Pondicherry ; they were promulgated there on January 11,1716 by Mgr. Claude de Visdelou, Bishop of Claudianopolis and vicar apostolic of Kwei-chou, and a well known opponent of the Chinese rites. Visdelou threatened Bouchet, then the vice principal of the French Jesuits in India, with excommunication *latae sententiae*, lest he have copies of the brief sent to the provincial of Malabar and the superior of the missions of Madurē, Mysore, and Carnate. On January 15, 1716, Bouchet figures again among those who drafted an answer to Visdelou, and in which they refused to recognize his jurisdiction.

Less often mentioned in Bouchet's biographies are his contributions to cartography. In 1719 he sent to Paris a small map of South India, followed later by other more detailed ones. These maps contributed to greater accuracy in the works of better known French cartographers such as Jean-Baptiste Bourguignon d'Anville, and Guillaume de l'Isle (or Delisle).[5] Only one of these maps appears to have been published,[6] in a German translation, in Joseph Stocklein's *Der Neue Welt-Bott.*[7]

Bouchet died on March 13,1732.

---

[5] Susan Gole; *Early Maps of India,* New Delhi : Sanskriti/Arnold Heinemann, 1976, pp. 63-64. D'Anville's *A Geographical Illustration of the map of India, Translated...by William Herbert* (London : Henry Gregory, 1759, p. 49) refers to an observation, by Father Bouchet, on the latitude of Cape Comorin (7°58′).

[6] According to R. V. Tooley : *A Dictionary of Mapmakers...from the earliest times to 1900,* London ; The Map Collectors' Circle, 1965, s.v. Bouchet.

[7] "Süd-Theil von Indien Herwerts des Ganges," facing p. 112 of vol. I. 7 (Augsburg, 1728).

Father Bouchet's letter is addressed to Melchior Cochet de Saint-Vallier (Beaune, 12 December 1664—Paris, 19 December 1738),[8] who, in 1695, became councilor, and, in 1701, president of the Paris *Parlement.* In the letter he is called president of the *Requétes du palais.* He is especially known for his book : *Traité de l'indult du Parlement de Paris, ou du Droit que le chancelier de France, les présidens, maîtres des requetes, conseillers et autres officiers du Parlement, ont sur les prélatures séculiéres réguliéres du royaume* (first published in 1703, revised edition in 1747).

[485b] They have neither codes nor digests, nor do they have any books in which are written down the laws to which they have to conform [486a] to solve the disputes that arise in their families. They do have the Vedam, which they regard as a holy book : it is divided into four parts called divine laws, but it is certainly not from these that they draw the maxims that determine their judgments. They have another book called Vicnachuram.[9] : in it there are many beautiful sentences and a few rules for the different castes, which might very well guide a judge. In it they also relate the highly ingenious way in which certain ancients discovered the truth against attempts to obscure it by various devices. Yet, even though Indians admire the wisdom and sagacity of those judges, it does not occur to them to follow their methods. Finally, an infinite number of beautiful sentences are exhibited in the works of ancient poets, who professed to teach sound morals ; but it is again not from them that they draw the principles that determine their decisions.

The equity of all their verdicts is entirely founded on a number of customs which they consider inviolable, and on certain usages which are handed down from father to son. They regard these usages as definite and infallible rules, to maintain peace in the family and to end the suits that arise, not only among private individuals, but also among royal princes. As soon as it has been proven that someone's claim is based on a custom that is followed within the caste, and on common usage, that is enough. One does not reason about it ; it is the rule, and one has to conform to it. He who would try to demonstrate that a particular custom is not fully established and that it has serious drawbacks, would not gain anything by doing so. Custom invariably prevails over the best arguments.

---

[8] Roman d'Amat : *Dictionnaire de Biographie Française,* vol. 9, col. 72, Paris : Letouzey et Ané, 1961.

[9] Possibly Vijñāneśvara, the author of the *Mitākṣarā.* Cf. Nelson : "Hindu Law at Madras," p. 222. For all Indian names and terms I maintain the spelling used by Bouchet himself. Notice, however, that these transliterations were produced by a French speaker, and have to be read as such.

Among many examples I might mention, I shall select one from the customs observed for marriage. According to a custom accepted in all castes, children of two brothers or two sisters are considered brothers of one another, whereas children of a brother and a sister are only germane cousins. "That is the reason, they say, why the latter are allowed to intermarry, but not the former. Otherwise, it would follow that a brother and a sister could equally well unite themselves in marriage, which would be horrible and totally against common sense." When one tries to convince them [486b] that the degree of relationship is exactly the same between children of two brothers or two sisters as between children of a brother and a sister, since they descend from the same lineage at the same distance, the objection appears to them absurd and they regard those who raise it as people who question the most basic principles.

Their unyielding attitude, based on the prejudices of their education and on the continuous application of these maxims, seems to them far more cogent than any kind of demonstration. Consequently, they think that they have convincingly removed all obstacles one opposes to them, as soon as they say : "It is the custom. For, they continue, how could we act in disagreement with usages established by the absolute consensus of our ancestors, of those who have followed them in the past and those who are living today ? Would one not have to be deprived of reason to revolt against that which has been regulated by so many wise men and has been given authority by uninterrupted practice ?"

I have asked them occasionally why they did not collect these customs in books which one might consult if needed. Their answer is that, if these customs were entered into books, only the learned would be able to read them, whereas, if they are handed down from generation to generation through the channel of tradition, everyone is fully informed. "However, they add, these are only the general laws and universal customs, for, as far as particular customs are concerned, they have been inscribed on copper plates which were guarded with care in a big tower at Cangibouram. Since the Moors have nearly entirely destroyed this large and famous town, no one has been able to find out what happened to these plates ; the only thing we know is that they contained everything that relates to any caste in particular and the relations which different castes should observe among one another."

I can vouch for what the Indians say about this, namely that in the past they preserved in Cangibouram everything concerning public deeds. It is, indeed, from Cangibouram that a brame once obtained the copper plate recording the donation of certain tribes, made more than four hundred years ago, by an Indian king to the church of San Thomé. When I arrived in India, the Moors had not yet conquered Cangibouram. In those days, when there was a dispute about caste among Indians, [487a] they said : "Let us go to Cangibouram ; we shall find there several brames who possess the laws inscribed on copper plates." Even today, while the city begins to reestablish itself, there are ten or twelve brames there who are often consulted and whose decisions are adhered to. I am not at all convinced that they have read this kind of laws ; at least they know more about the tradition than others.

"As far as matters not related to caste are concerned, the Indians say, these are easily resolved. Common sense and natural insight suffice for anyone who sincerely wishes to decide with equity." As a matter of fact, they have a number of general maxims in lieu of laws, which are known to everybody : the most important ones, on caste, no one ignores. There are no problems except in a few embarrassing cases, which, moreover, present themselves only rarely. I shall relate a few of these maxims, which establish some kind of custom in India.

I remember telling one day a gentleman from Europe what I have now the honor to report to you. He told me that there must certainly be much injustice in India, not only because of the inequity and greed of the judges, but also because there are no sure rules as there are in Europe, in civil law and canon law. I shall not examine here the enormous advantages one pretends to derive from this prodigious multitude of laws ; but it seems to me that the Indians are not really to be blamed for not having cared to codify their customs. After all, is it not enough that they posses them perfectly ? And, if this is so, what is the good of books ? In reality, nothing is better known than these customs : I have seen children ten or twelve years old who knew them perfectly. And when one requires of them something contrary to them, they answer immediately : "*Ajaratoucou virodam* [Hācārattuku virotam][10] (it is against custom)." If I am not mistaken, I have read somewhere, in a lawbook, that, if customs are accepted by general agreement in a nation, it matters little that they are unwritten ; the fact that it is not necessary to write them down is perfect proof of their validity and authority. This maxim fully justifies the practice of the Indians.

[487b] The Indians dearly remember a number of kings who have become famous on account of the equity of decisions they passed, decisions which all peoples have invariably praised. One of the most remarkable among them was Viéramarken. They say that he was unique in unraveling truth from falsehood, and in disentangling it from the deepest darkness in which one might try to hide it. His reputation was so univer-

---

[10] I thank my colleague, Leigh Lisker, for providing, as far as possible, modern transliterations for South Indian terms used in the letter.

sally established that not only the princes and kings of his time, but the gods themselves appealed to him to settle their differences. The following happened to the gods of the *chorcam* [corkkam] (which is the name of one of their five paradises). These gods had a serious disagreement ; unable to solve it themselves, they agreed to let Viéramarken settle it. They provided him with an aerial chariot, and installed him on the throne of Devendiren. His decisions were so well received that they gave him, by way of compensation, the throne on which he had been seated.

However famous this judge was, the Indians hasten to add that he was by far inferior to another named Mariadi-ramen [Mariyātai-rāmaṉ].[11] In olden times he was considered the head of the castes ; some say he was a brame. Never has anyone displayed more acuteness and sagacity than he. People sometimes took pleasure in inventing cases that were specially intricate and puzzling, thinking that he would surely not be able to clear them up. But again and again they were surprised to see how neatly he unravelled the most confused cases, and the ease with which he arrived at decisions which were absolutely unobjectionable. Far from me to consider these decisions as admirable as the Indians say they are ; if I related them here together with all the circumstances that surround them, nothing could be less conformable to our taste. I shall restrict myself to selecting two of them that have something special. The first one has something in common with Solomon's judgement. It is as follows.

A rich man had married two wives. The first one, who was born without any charms, had nevertheless one advantage over the second, namely that she had a child of her husband, whereas the other had not. On the other hand, the latter was endowed with the kind of beauty that had completely captured her husband's heart. The first wife, incensed by the fact that she was held in disdain while her rival was loved and esteemed, [488a] decided to avenge herself ; she resorted to a stratagem as cruel as it is unusual in India. Before realizing her project she made sure to spread the rumor that, of course, she was extremely sensitive to the disdain of her husband who had eyes for her rival only, but that, on the other hand, she had a son who meant everything to her. She then showed in every possible way how fond she was of the boy who was still a nursling. "This is the way in which I avenge myself of my rival : I only have to show her this child, and I see painted on her face the grief not to have as much."

---

[11] See P. Ramachandra Rao : *Tales of...Mariada Raman. 21 Amusing Stories*, Madras. G. A. Natesan, 1902. Bouchet's first story corresponds, generally, to "The Child Murderess Detected" (pp. 5-10) : details vary, but the solution is identical. Bouchet's second story is similar to another tale, on how to recogize an impostor (pp. 43-47), but in this case even the solution is different : crawling through the neck of a bottle.

After she had convinced everyone how infinitely fond she was of her son, she decided to kill the child—something that sounds unbelievable in India. And indeed, while her husband was absent in a distant town, she wrung the child's neck. and took it to the other wife while she was asleep. Next morning, pretending to look for her son, she ran to her rival's room. Seeing the child dead there, she threw herself down, pulled out her hair, and screamed loud enough to be heard by all the people. "O this wretched woman ! Look what she has done out of wrath because I have a son and she does not." All the people gathered as she was screaming ; suspicion mounted against the other woman. "It is just not possible that a mother would kill her own son. And even if a mother might eventually be carrried away to that point, this one can surely not be suspected of having committed such a crime, for she adored her son and regarded him as her sole consolation." The other woman had no other defense than to say that there is no passion more cruel and violent than jealousy, which can lead to the most tragic excesses. There were no witnesses, and no one knew how to find out the truth. After several individuals had tried in vain to decide this obscure case, it is brought before Mariadi-ramen. A date was fixed on which both women were to plead their causes. They did so with the kind of natural eloquence that passion is wont to generate. Mariadi-ramen listened to both of them, and then decided as follows. "The one who is innocent and claims the other one to be guilty of the crime under investigation, shall walk around this assembly hall in the condition which I shall prescribe." [488b] The condition which he indicated was an indecent one and one unworthy of a chaste woman. The mother of the child rose and said boldly : "To show you that it is indeed my rival who is guilty, I not only agree to go around this assembly in the condition which is required of me,—I shall do it a hundred times, if necessary." The other woman said : "However innocent I am, even if I were to be convicted of the crime of which I have been falsely accused, and even if I were condemned to die the most cruel death, I shall never do what is required of me here. I shall rather die a hundred times than consent to doing things that are unworthy of a woman who has any honor left at all." The first woman wanted to retort, but the judge told her to remain silent. Raising his voice he declared the second woman innocent and the first one guilty. "For a woman who is so modest as to rather subject herself to a certain death than agree to do something that is ever so slightly indecent, can never have decided to commit so heinous a crime. On the other hand, one who has lost all shame and bashfulness, and subjects herself voluntarily to this kind of indecent behavior, could not indicate more clearly that she is capable of the most heinous crimes." The first woman, ashamed to have been thus exposed, was forced publicly to confess her crime. Everyone in the audience applauded the decision, and Mariadi-ramen's reputation soon spread all over India.

The second example has something strange and rather fabulous to it. As you know, the Indians believe in the existence of lower classes of gods. Although these are, by nature, far inferior to the gods of a higher order, they are nevertheless much more skilful than all mankind put together. This being so, here are the facts. A man by the name of Parjen, known for his strength and his extraordinary skill. was married and had, for quite some time, lived peacefully with his wife. One day, I do not know why, he became very angry at her ; he abandoned her, and went away to a distant kingdom. In the meanwhile, according to the Indians, one of the lower gods whom I have just mentioned, took the form of Parjen ; he came to the house and made peace with his parents-in-law. [489a] When they had thus lived together for about three or four months, the real Parjen arrived. He threw himself at the feet of his parents-in-law, and begged them to return his wife to him. He sincerely acknowledged that it was wrong on his part to get carried way as much as he had been, but that, after all, a first offense ought to be forgiven. The parents-in-law were very surprised to hear him say all this, for they did not understand why Parjen once again asked for the pardon they had given him a few months earlier. And they were even more surprised when the false Parjen arrived. Seeing each other face to face, they began to quarrel together, and they tried to chase one another out of the house. People gathered around, and no one was able to determine which was the true one. They both had the same figure, the same apparel, the same facial expression, and the same tone of voice. In short, to relate in a few words what the Indians are wont to tell at great length, they were exactly like the Sosias described by Plautus.[12] They pleaded before the palleacaren (palaiyakkāraṉ), but he confessed that he did not understand anything of the whole matter. The went to the royal palace ; the king gathered his counselors but, after long deliberations, they did not know what to say either. In the end the matter was brought before Mariadi-ramen. He was more than a little puzzled when, after the real Parjen had stated his name, his father's and mother's names, the names of other relatives, the name of the village where he was born, together with other events in his life, the false Parjen said: "He who has just spoken is a cheat; he has inquired about my name, the names of my parents, about my birth, and everything else concerning me, and now he comes and falsely declares that he is Parjen. I am the real one, and I take all those present here as witnesses, especially those who have seen my strength and my skill".—The true Parjen replied: "Ha! it is me who has done all the things you falsely claim". The large crowd that heard these declarations thought that this time Mariadi-ramen would not get out of such puzzling business. but he soon demonstrated that he always had adequate ways of clearing up the most obscure and confused facts. Pointing at an enormously large stone which several men together would have difficulty moving, he said: [489b] "Your respective statements make it difficult for me to come to a decision; and yet, I do have a safe way to find out the truth. The real Parjen is reputed to be unusually strong and skilful; let him prove it by lifting up that stone with his hands". The real Parjen tried his best to move the stone; people were surprised to see that he actually lifted it ever so little, even though the effort made him fall to the ground. He was duly applauded by the full assembly who were convinced that he was the real Parjen. The false Parjen in turn approached the stone, and lifted it up with his hands as if it were a feather. People exclaimed, "There is no doubt, this one is the real Parjen." Mariadi-ramen, on the contrary, decided in favor of the first, who had hardly lifted the stone. He gave his reasons as follows: "He who first lifted the stone did what was humanly possible even when one has extraordinary strength; the second, who lifted the stone without trouble and was ready to throw it up in the air, is undoubtedly a demon or one of the lower gods, who has taken the form of Parjen; for there is not a single mortal who would dare to try what he did". The false Parjen was so ashamed to have been exposed that he disappeared instantly. There is no doubt that this story has been invented to demonstrate the extent of Mariadi-ramen's sagacity. I have left out many details which the Indians add to it ; they would be more tiresome than they would please you.

---

[12] Reference to Plautus' *Amphitruo*, in which Hermes, disguised as the slave Sosia, keeps away intruders while Zeus, in the form of Amphitruo, is with Alkmene. The arrival of the real Rosia leads to all kinds of confusion.

There is still another individual, named Apachi[13] of whom the Indians speak very often : he resembles in many ways our own Aesop. He lived at the court of one of the Indian kings, and was capable of solving even the most obscure riddles which, in those days, kings were wont to propose to one another. For it was mandatory to find the meaning of these riddles, especially those that were proposed by the universal emperor of India ; there were penalties for those who did not succeed. However, since this touches only indirectly on the decrees pronounced by the Ancients, I shall not go into it here.

These examples clearly illustrate what the Indians consider to be the ideal judge. They exult when they speak of the qualities he is supposed to have ; [490a] and, if they were as punctilious in actual practice as they are in their speculations, I think they would not in any way yield to the Europeans. "A judge, they say, must acquire a good knowledge of the case under consideration ; he must know perfectly all maxims that bear upon the law ; he must be virtuous ; he should be rich so as not to be bought with money ; he must be more than twenty years old, not to be inclined to make hurried decisions because of imprudence which is the earmark of youth ; he must be less than sixty years old, for the minds of sexagenarians weaken, and they are no longer capable of exerting the same energy ; if he is a friend or relative of either party, he must disqualify himself as a judge, lest affection blind him ; he shall never decide alone, however good his intentions and knowledge may be". All the things I have just now enumerated are written in grandonic verses, i.e. in the Samouseradam[14] language.

---

[13] Appāji (Sāḷuva Timma), Telugu poet, Brahman minister and friend of Krishna Deva Raya of Vijayanagar (1509-1529). See T. M. Sundaram Aiyar : *The Story of Raya and Appaji. 16 Amusing and Instructive Stories*, Madras : G. A. Natesan, 1908.

[14] The same printing error : *Samouseradam*, for *Samonscradam*, also appears in the 1720 and 1781 editions. On the various names used by early

They add that it shall be the judge's principal concern to examine witnesses carefully : they can be easily corrupted and are normally very clever at giving ambiguous answers, in order to exonerate themselves in case they are caught in false testimony. In fact, I may say that even the least intelligent Indians would, in this respect, teach a lesson to those in Europe who are most accustomed to concealing the truth. That is why judges who want to arrive at the full truth, insist on having the responses which witnesses gave to their questions put down in writing ; they then dismiss them ; two days later they call them again, and ask them the same questions in a somewhat different way ; and since the judges are usually as expert as the witnesses themselves, they construe the answers of the witnesses in every possible way, not to allow them later to explain their earlier statements in any other than their common sense. The Indians say that this is what happens when the judge is not corrupt ; if he has been won over, he will unfailingly make the witnesses say what he wants them to say.

Other qualities required of a judge are patience, gentleness, and, above all, high regard for what is prescribed by custom. [490b] All Indian verses are replete with invectives against a judge who does not obey the laws. They say, "He is a raging torrent that has shattered its banks and cannot be stopped by anything ; he devastates and lays waste anything that comes in his path".

They also have a kind of proverb which they repeat incessantly, namely that the judge shall never look at the faces or hands of pleading parties. They extend the interpretation of this maxim to anything that might establish some kind of connection between the judge and the party, such as birth, alliance, or profession. In connection with the fact that he shall never look at the faces of the parties they quote a quatrain which is to them more or less what Pibrac's quatrains were to

---

European authors to indicate the Sanskrit language—including "Grandonic" —, see L. Rocher : *Paulinus a S. Bartholomaeo. Dissertation on the Sanskrit Language*, Amsterdam : Benjamins, 1977, text pp. 3-4, translation pp. 81-82.

us[15]. Its meaning is as follows : "A king who has to decide a lawsuit between one of his subjects and one of the princes, his sons, shall look at the prince, his son, as if he were one of his subjects, and at the subject as if he were his son lest natural affection mislead him ; even then it will be quite an accomplishment if, notwithstanding this precaution, his self-esteem, through imperceptible vicissitudes. does not mar his best intentions." I have also heard them speak in the highest terms of a king who ruled long ago, at a time when justice was meted out perfectly. He was so afraid of being taken by surprise that each time he climbed on his throne to decide a lawsuit, he had himself blindfolded before the arrival of the parties ; and when the parties were present, he explicitly forbade them to say anything that might reveal their identity. They add, "That is also the time when the gods, delighted by the equity of these incorruptible judges, descended on earth to witness it all, and shed showers of flowers on their heads. Alas ! our time is so different from those happy days ! only fraud and injustice remain."

In the second place, the Indians say, the fact that a judge shall not look at the hands of the parties means that he shall not allow himself to be won by presents, for nothing is more unworthy of a man of that station than giving way to as mean a passion as greed. This is one of their sentences : "When you visit the temple of a god, when you pay your respects to the master who taught you, when you go to see one of your relatives or friends whom you have not met for a long time, [491a] it is appropriate to take them presents, but not when you go to see a judge ; to him it would be an insult."

Some time ago I talked to an Indian who was reputed to be very learned; among other things we also discussed this particular topic. He told me that the maxim that a judge shall not look at the hands or faces of the parties has indeed a very exalted meaning; however, he said, the opposite maxim has an even more refined and delicate sense. In other words, he held that a judge shall look at the faces and hands of those who plead before him. He shall look at their faces, for in many cases the faces of the parties and witnesses exhibit nearly sure marks of what goes on in their minds, and they provide great opportunities to find out the truth. Passions, he continued, are often so clearly painted in the eyes and all over the face that one easily recognizes hate, love, anger, or whatever other passion the individual tries to conceal. There characteristic marks are often so evident that they contribute a good deal to disclosing what the individual tried hard to conceal. And, even though such marks are not always infallible, they are often extremely useful. The Indians say that the face, which can be seen, is the reflection of the soul, which cannot. He added that the judge shall also look at the hands, i.e. the presents one wants to give him. He will thus find out either that the pleader has a poor opinion of his own cause, or that he suspects the equity of the judge. This kind of knowledge may very well guide him later in the proceedings.

---

[15] Gui du Faur, Seigneur de Pibrac (Toulouse 1529—Paris 1584). His *Cinquante quatrains contenant préceptes et enseignements utiles pour la vie de l'homme, composez a' l'imitation de Phocylides, d'Epicharmus et autres Poëtes grecs*, was first published in 1574 ; there are numerous later editions, with additions. In the 18th and the first half of the 19th centuries Pibrac's *Quatrains* were included in many civics books for children (Alban Cabos : *Guy du Faur de Pibrac*, Paris : Champion, 1922, p. 337 n.1).

The Indian books are full of invectives and imprecations against iniquitous judges who allow themselves to be bribed, and who betray justice. This is the meaning of one of their quatrains: "A bad judge who sentences the innocent will have his family ruined, and his house destroyed; weeds and *eroucou* [erukku] shrubs will grow in the rooms he lived in, and his children will die at a tender age." If I wanted to explore this subject further, I would never have finished; I shall rather pass on to other topics which are not less important.

This is what they think about witnesses who are often to be interrogated by the judges: one ought to be on one's guard against witnesses who are very young or beyond sixty years of age, or who are poor; [491 b] as far as women are concerned, they should never be admitted, except in cases of absolute emergency. They have strange ideas about the testimony of one-eyed or hunchbacked people, and of all those who have similar physical disfigurements. "Experience has taught us that the testimony of such people is always very suspect, and that they are much more easily corrupted than others." I must add that Europeans are not at all fit to hear Indians as witnesses, unless they have lived in India for a long time and have fully mastered the language ; otherwise they will inevitably be misled by the ambiguous answers they receive.

Each head of a village is the natural judge in suits arising within his village ; to make sure that his decisions are as equitable as possible, he selects three or four of the most experienced villagers, who sit as assessors, and who pronounce judgement with him. If the convicted party is not satisfied with the judgment, he may appeal to the maniacarren [māṇiyakkāraṉ], who is a kind of chief who has a group of villages under his jurisdiction. He too surrounds himself with two or three individuals who help him examine and decide the the case. Finally, it is possible once more to appeal against this decision to the immediate officers of the prince, who judge in the last resort. If it is a question related to caste, it is the heads of castes who decide. In those cases it is also possible for the relatives to assemble ; in general they decide with great equity. The gourous, i e. the spiritual fathers (for the Gentiles have these as much as the Christians), settle most disputes that arise among their disciples. It happens that parties to a dispute choose arbitrators, whom they give authority to judge their difference ; they then comply with the decision without further appeal to other judges.

Of all these judges the maniacarrens are the only ones who take a fee, and even they do not always do so. But there are some who take one tenth of the amount which was the object of the lawsuit ; e.g., if the amount is one hundred ecus, one gives ten to the maniacarren. It is normally the party that wins the case who is forced to pay this, for the losing party is already punished enough by having to pay what he owes. [492a] As far as the pagan gourous are concerned, they take much more ; but, according to what they say, this money is not for them : it goes to acts of piety and good works.

After this description of the judges, I must now tell you, Sir, what are the duties of the parties. Those who are engaged in a lawsuit shall plead their cause in person, except when a friend agrees to do so for them. They must maintain a respectful attitude in the presence of their judges ; they do not interrupt one another, they merely indicate by a slight movement of the head that they intend to refute what the other party says. When the pleadings are finished, the parties and their witnesses are dismissed. The judge and his counselors deliberate together ; and, as soon as they agree on what the judgement shall be, the judge calls in the parties and hands them the decree. You see, Sir, that in this way one avoids the delays caused by chicanery, and that the legal charges amount to very little. In fact, there is no country in the world in which litigation is cheaper than in India : as long as the judges maintain their integrity, one is out of court and out of litigation in no time.

Since most lawsuits in India are about debts and about borrowed money the remittal of which has been delayed too long, I owe you an explanation of how these sorts of loans are treated. It is customary for the borrower to give a *mourri* [muṟi], i.e. a bond, in which he pledges to pay his creditor the amount borrowed together with interest. For this document to be authentic it shall be signed by at least three witnesses ; it bears the day, month, and year when the money has been received, and states how much interest one has promised to pay per month.

The Indians distinguish three kinds of interest : some interests are virtuous, others are sinful, and others again are neither. These are the expressions they use. The interest called virtuous is of one percent per month, i.e. twelve percent per year. They say that those who do not take more than this perform an act of great virtue, for, they add, with the small profit they make, they relieve the misery of those who are in pressing need. They nearly speak of this way of lending money as if it were almsgiving. The interest called sinful is of four percent per month, i.e. forty-eight percent per year, [492b] which means that after a period of two years and two months the amount is doubled. The interest which is neither virtuous nor sinful is of two percent per month, i.e. twenty-four percent per year. Those who lend money and take no more than the interest which is virtuous, ordinarily do not count the first month nor the month in which payment is made ; they are however not forced to make this allowance, and, when they thus relinquish some of their rights, it is pure generosity on their part. In general, it does not occur to them to examine whether or not there is usury in this kind of loans ; they believe that they have a right to make the most of their money, and they consider forbidden only that interest which they themselves regard as sinful.

After the creditor has waited for several months, or a year, or two years, he is entitled to arrest his debtor in the name of the prince, and under penalty of being declared a rebel. The debtor is supposed not to disregard this until he has satisfied his creditor. This custom resembles in many ways the haro cry which is still in use in Normandy,[16] by means of which one invokes the help of the judiciary and forces the debtor to go before the judge. In this country the debtor is not yet forced to appear before the judge, for the first passers-by intervene on his behalf and insist that the creditor grant him another few months. Once this term has expired, the creditor is again entitled to arrest the debtor in the name of the prince. It is surprising to see the total submissiveness of those who are thus arrested, for not only would they not dare to run away, but they are not even allowed to drink or eat without the express permission of the creditor. It is then that they are brought before the judge, who again asks for a few months' delay. In the meanwhile the interest continues to accumulate. Finally, if the debtor fails to pay at the prescribed time, the judge convicts him, has him placed in a kind of prison, and has his cattle and furniture sold. It is, however, rare that the entire amount is recovered ; one normally induces the creditor to forego part of the interest which he is entitled to.

---

[16] The Old Norman custom of "crying for justice," appears for the first time in France in the *Grand Coutumier de Normandie* ; it still survives on the Channel Islands. The wronged party must cry, on his knees and before witnesses : "Haro ! haro ! haro ; à l'aide, mon prince, on me fait tort."

When someone is accused of theft and there are strong presumptions against him, he is forced to prove his innocence by plunging his hand in a kettle of boiling water. As soon as he withdraws his hand, one wraps it in a piece of cloth, and seals it near the wrist. [493a] Three days later one examines the hand, and if there is no mark of burn, he is declared innocent. This test is quite common in India, and there are many who withdraw their hands uninjured from boiling oil.

To speak of the Christians only, some of them have been forced thus to give evidence of their innocence. Without consulting us they went to public squares, and, in view of everyone, plunged their hands and their arms up to the elbow in boiling oil, without being burned at all. I have examined their hands and their arms without finding any trace of burn.

I once knew a Christian who had a most charming wife ; and yet he could not rid himself of the idea that she was unfaithful to him. The deadly reproaches which he constantly addressed to her reduced her to a state of desperation One day, when the poor woman was overcome by grief, she told her husband that she was prepared to give him any proof he wanted of her innocence. The husband at once locked the door, filled a vessel with oil, boiled it, and ordered his wife to plunge her hand into it ; she obeyed immediately, saying that she would not withdraw her hand unless so ordered. The husband was astounded at his wife's determination ; he left her a while without saying anything. But then, seeing that she gave no sign of pain and that her hand was not burned at all, he threw himself at her feet, and asked to be forgiven. Four or five days later he came to see me with his wife, and told me the whole story. I mainly questioned the wife, who assured me that that she had had no more pain than had she put her hand in lukewarm water. Believe what you please ; as far as I am concerned, having seen the degree of jealousy of the husband and how fully convinced he was afterwards of his wife's virtuousness, I cannot doubt the veracity of the incident.

In another village a Christian woman, who was suspected by her husband, was accused of infidelity by him before the caste, where the Gentiles hold all power. She was sentenced on the spot to walk twenty steps, carrying in the border of the cloth that covered her head thirty burning coals ; if the cloth burned, she was to be declared guilty. [493b] She carried the coal, and, after walking twenty steps, she flung the coal at the accuser. This incident happened before more than two hundred witnesses. I arrived among these people two months after the facts, and I imposed on the husband a penance proportionate to his fault.

I know others who have been forced to lick with their tongues flaming tiles, and who were not burned by it. When the Gentiles impose the ordeal of boiling oil, they first have the accused wash his hands ; then they cut his fingernails for fear that there might be a hidden remedy against burns.

They also resort to another ordeal which is quite common. They prepare a large round vessel, something like a big bowl, the entrance to which is so narrow that nothing more than a wrist can pass through it. In the bowl they place one of those big serpents whose bite is fatal if not taken care of immediately ; they also drop a ring in it. Subsequently those who are suspected of having committed theft are forced to withdraw the ring from the vessel. The first one who is bitten is declared guilty.

However, before they have recourse to these extremes, they take every precaution not to expose the accused to these types of ordeals too lightly. For instance, if a golden necklace or some similar jewel has been stolen, they hand thirty or forty people round vessels in the form of bowls, one to each, so that the thief can secretly deposit the jewel in it. These vessels are made of material that easily dissolves in water. They will go and drop their vessels in a sort of basin, where all bowls are dissolved. One normally finds at the bottom of the basin the stolen object, without having to expose the thief.

When it comes to murder, and the lex talionis exists in the caste, this law is observed in all its rigor. Father Martin's letter......[17] gives several examples of it. One should however not think that the lex talionis prevails throughout the caste of thieves: it is practised only among those in between Marava [18] and Maduré.

Murder is relatively rare all over India ; this is probably the reason why there is little justice for this sort of crime. [494a] Provided one gives a certain amount of money to the prince, say one hundred pagodes, he obtains his pardon without difficulty. The surprising thing is that, if an officer of the prince is killed, the murderer will be in the clear by donating one thousand ecus. The law allows a husband to kill his adulterous wife and her accomplice, if he can surprise them together ; but he must kill them both, in which case no suit can be brought against him.

---

[17] The 1840 edition has : "which you can read in one of the collections of these Lettres édifiantes et curieuses." The same formula occurs in the 1781 edition ; the 1720 edition refers to "the tenth collection of these Lettrés édifiantes et curieuses." For bibliographical data on the letter from Father Pierre Martin (1665-1716) to Father de Villette, dated Marava, 8 November 1709, see Streit : *Bibliotheca Missionum*, vol. 6, p. 27, No. 111. English translations in *The Travels of Several Learned Missioners of the Society of Jesus*, London : Gosling; 1714, pp. 126-132; also John Lockman : *Travels of the Jesuits*, London : John Noon, 1743, part 2, pp. 408-416, especially pp. 410-413, with disbelieving comments, in the footnotes, by the editor.

[18] Nelson : "Hindu Law at Madras," p. 227 : "by which...term I understand the town of Ramnad." However, Lockman (*op. cit.* 2, p. 408), translating Father Martin : "*Marava* is a great Kingdom, tributary to that of *Madura*. However, the monarch who governs it is only nominally so ; his Troops being sufficient to make Head against those of the King of *Madura*, shou'd the latter pretend to claim the Tribute by Force of arms. The King of *Marava* reigns with absolute Sway, and several Princes are subject to him, all whom he dispossesses of their Dominions at Pleasure." On Bouchet's map of South India (see note 7) Marava clearly indicates the territory East of Maduré and South of Tanjaor.

It is not exactly fear of punishment that holds them to their duties. During the reign of princess Mangamal[19] who made it her principle not to have anyone die, there was no greater disorder than under the kings who punished the guilty. If there was a state in Europe without any death penalty and in which exile, as is the case in India, consisted of nothing else than leaving the town by one gate and re-entering it by another, one can imagine the excesses in which people would engage !

But whoever the king be, it is never permitted in India to have a brame die, whatever crime he be guilty of ; the only way to punish him is to tear his eyes out. I was in the city of Trichirapali when they caught two brames who were performing abominable sacrifices to ensure the death of the queen. The only punishment they got was that their eyes were torn out ; and even then this was done against the wishes of the queen who could not conceive that they be punished. On the other hand, one sees in the history of the kings of Maduré, that, when they were unhappy with certain brames, they of course avoided shedding their blood, but they had them confined within a thorny hedge, twelve or fifteen feet across ; the hedge was guarded by soldiers ; every day the amount of food and drink that was given them was reduced, and in this way the absence of food slowly caused them to die.

All this, Sir, will give you a general idea of how justice is being administered in India I shall now relate some of their maxims, which are the actual laws that guide them in their judgments.

---

[19] Queen Mangammā', regent of Madura (*Imperial Gazetteer* vol. 16, p. 390).

[494b] FIRST MAXIM.

When there are several children in a family, the males alone inherit ; the girls have no claim at all to the inheritance.

I have often reproached Indians that this maxim appears unjust and contrary to natural law, for daughters have the the same father and mother as their brothers. In the first place they came up with the general answer that that was the custom, and that such a custom, introduced as it was by the general consensus of the nation, could not possibly be unjust. They then added that the daughters had no ground for complaint, for their fathers and mothers and, in their absence, their brothers had the obligation to marry them off. In this way, by being transferred into another family with the same rank as their own (for marriages outside the caste are forbidden), the advantages which a daughter encountered in her new family made up for the share in the inheritance she might have been able to claim. I answered, "You can tell that to the Europeans who live on the coast and who have only a very superficial knowledge of your customs, but not to someone like me who has lived with you for many years. After all, is it not the fathers and mothers who profit most from the marriages of their daughters ? Is it not to them that the bridegrooms take the money with which they buy the daughters they are about to marry ?" For it should be kept in mind that, for the Indians, marrying and buying a wife are the same thing ; hence when they want people to know that they are going to get married they normally say that they are going to buy a wife

However, I must confess that they have a ready answer to this objection of mine. This is what they say : "The sum of money which the bridegroom gives his father-in-law is almost entirely used to buy ornaments for the bride. Indeed, he has earrings made for her, silver bracelets, coral and golden necklaces, golden and silver rings, in accordance with the rank and elevation of their castes (it should be noticed that these rings are worn on the toes as well as on the fingers). Whatever is left over, they add, is used for the wedding banquet ; in fact, the expenses imposed on the father of the bride often exceed what he received." [495a] Those who use the money in other ways are looked down upon ; for instance, they object to the greed of certain brames who sell their daughters and use hardly anything for them from the amount that is given them. These answer, however, that they do use the money justly, for it serves to marry off their male children.

I remember one day in Europe, when I was explaining this custom of the Indians. There was an outcry that nothing could be more barbarian and contrary to the laws of nature. And yet, we have something similar in our own sacred books. It is said that after the death of Salphad, who had no male children, his daughters called Moses and Eleazar [Numbers 27, 1-11] and asked that they be allowed to collect the inheritance. From which the learned Cornelius a Lapide[20] draws the conclusion that among the Jews daughters did not receive any share of their father's inheritance if they had brothers : "From this passage it appears that among Jews, as soon as there was male offspring, they took the entire estate, so that daughters could not collect any share of the inheritance. The reason for this is, the same author adds, that among the Israelites families were named, distinguished, and preserved through the male children only. This distinction was thus made by God's providence, in order that one might recognize the sequence of the heritages and from whom they originated, and in order that one might realize that the Redeemer was born a Jew and in the family of Juda, as promised by God to Jacob." Hence it is that, among the Jews, daughters had nothing to look forward to from their father's estate, as soon as they had brothers ; and even when they had none, it is not so clear whether they did have a claim, for we see that when the daughters of Salphad claimed their respective shares, God had to be consulted and his decision, which was favorable, waited for.

---

[20] Actually, Cornelius Cornelii a Lapide, translation of Dutch Cornelis Cornelissen van de Steen (1567-1637), Jesuit, biblical scholar, professor at Louvain and the Collegium Romanum. Author of *Commentarii in S. Scripturas* (1621-1622 ; lates complete edition, 1874, 25 volumes). See Sommervogel : *op. cit.* vol. 4, 1893, col. 1511-1526.

Daughters among the Indians are even worse off than among the Jews. At least Jewish daughters had a right to the estate when they had no brothers, whereas among the Indians the exclusion of daughters is absolute, irrespective of whether they have brothers or not. Two brothers marry ; one has a son, the other a daughter. [495b] All the goods which naturally should go to the girl go to her uncle, who at the same time contracts the obligation to marry his niece off as well as he can

There are, however, in India a number of petty kingdoms in which princesses enjoy considerable advantages which place them well ahead of their brothers, for the right of succession is always from the side of the mother. For example, if a king has a daughter of a wife of royal blood, while at the same time having a male child of another wife of the same caste, it is the princess who will succeed and who will receive the inheritance. She can marry whom she pleases ; and even if her husband is not of royal blood, her children will be kings, for they have royal blood on their mother's side. Their father does not count, for, as I said, the right devolves solely from the side of the mother.

Another consequence of the same principle is that, if the reigning princess has a son and a daughter, and if one is unable to find a princess of royal blood to marry the prince, the daughter's children will reign rather than her brother's. And when both the prince and princess remain childless, as it happened in the kingdom of Travancor, one looks elswhere to find descendants of the same blood. This practice is followed even when the king has offspring of his own caste, if they are not of royal blood from the side of the mother. When the absolute power rests with queens, there are always six or seven persons who help them carry the burden of government.

SECOND MAXIM.

The eldest son of a king or prince, a palleacarren, or head of a village, does not necessarily succeed to the estates or government of his father.

This maxim, which governs the succession of princes, requires some explanation. Indians distinguish two categories of dignities : those that pass from father to son, and those that attach to a certain person without necessarily being passed on to his children. I do not refer here to the latter category, for the prince can dispose of them at will and he can select whom he wants ; but I want to speak of the estates that are hereditary. Custom requires that the eldest succeed, if their qualities are such that they are capable of doing so ; [496a, but if they are not very intelligent and if they appear unfit to govern well, and if, on the other hand, the younger one seems to be competent to perform the duties of a prince, the king makes the necessary arrangments to pass his estates on to the younger one. If he fails to do so, his relatives assemble upon his death and elect the younger one. And, since the custom is well established, it is less difficult for the eldest to obey it. In fact, his situation is no worse for it ; while avoiding the vexations and anguish inherent to royalty, he fully enjoys the pleasures and comforts that go with it. Also, no stone is left unturned to allay the pain he might suffer as a result of his forced submission.

What has been said of kings and princes is also true, proportionately, of palleacarrens and heads of villages. We have observed with admiration how two brothers, the princes of Tanjaour, governed together the country that was left them by their elder brother, who was childless It is true that experience was to teach them that this common rule troubled their subjects, and that for this reason they divided the kingdom of Tanjaour between themselves. But they do not cease to live together in the same palace, and do so in perfect harmony. They are the children of a brother of the famous

डा. 6406 स्मारक

Sivaji,[21] who is renowned in India for having shattered the throne of the successors of Tamerlan.

The Mogol princes behave quite differently : he who has the strongest army and who defeats his brothers succeeds to the vast territories of the Mogol ; the conquered ones always pay with their lives or imprisonment. They say that when Aureng-zeb was asked to determine which one of his children he considered most capable of succeeding him, he refused to do so, the reason being that that decision had to be made in heaven. He himself acceded to the throne after killing his brothers and imprisoning his father whom, as he put it, he wanted to relieve of the burden of government : strange politics indeed, on the part of the Mogols, when brothers are reduced to the necessity of murdering one another. Our Indian princes abhor so detestable a maxim : there is no other country in which brothers are equally united.

[496b] THIRD MAXIM.

If the property has not been divided upon the death of the father, anything that has been acquired by one of the children must be entered into the common stock and divided equally.

This maxim may look strange, but it is universally applied in India ; it is also a rule that allows the settlement of numerous lawsuits. An example will help clarify what I mean. Imagine that an Indian, who has five children, leaves at the time of his death one hundred pagodes, which is five hundred livres in our money. If one divided these, each one should receive one hundred livres. But if there is no partition—which is resorted to very rarely, especially when one of the brothers is unmarried—, then, even if the eldest has earned ten thousand pagodes, he has to add this amount to the common stock, for it to be divided equally among all the brothers. All the relatives assemble for that purpose ; if there is any resistance on the part of the eldest, he is uniformly denounced on the basis of the maxim I am now explaining.

---

[21] In reality they were the descendants of Śivājī's half-brother, Vyankojī, who established a Maratha dynasty at Tanjore in 1674.

There is another custom, blamed by some, admired by others. When among brothers one is not very intelligent whereas the others are, the share of the former is made larger than that of the latter. They say that the one who is not intelligent is incapable of making the most of what he gets, whereas the others who are ingenious and skilful will soon become far richer than the brother to whom they surrendered the better part of the inheritance.

There are families in which the question of partition never arises : all goods are held in common, and they live in perfect harmony. This happens when someone in the family is clever enough to make it continue. He is the one who manages all expenses ; he is, as it were, the superior of the others who have no other worry than working under his orders. He marries off the sons and grandsons of his brothers, he provides for their wants, such as clothing, food, etc. The remarkable thing is that occasionally one finds women who are thus able to manage several families. I have known one who was in charge of eighty individuals whom she provided with every daily need. There are families in which no partition has ever been made, [497a] and which are not for that reason less prosperous than Indians normally are. The members of families that display this kind of unity, are generally greatly respected, and one tries hard to enter into marital alliances with them. The kind of detachment from worldly goods, which one observes among the pagans, is likely to confound so many Christians in Europe, whom the slightest profit divides and engages in endless lawsuits !

FOURTH MAXIM.

Adopted children share equally in the estate with the children of their adoptive fathers and mothers.

When a man is childless, he often chooses a child from the household of one of his relatives, and adopts him. The ceremonies performed on these occasions are worth being described. A meeting is called at the house of the relatives of the adopter. One prepares a large brass vessel shaped like one of our large dishes. It is placed in such a way that the child can put his two feet in it, and stand up on it if he is strong enough to do so. Then the husband and wife speak more or less as follows: "We hereby give notice that, having no children of our own, we wish to adopt the one you see here. We choose him to be our son, so much so that henceforth all our goods will belong to him, as if he were born to us. He shall no longer expect anything from his natural father. In token whereof we shall drink saffron water, if you agree." Those present indicate their agreement by moving their heads. Then the husband and his wife bow down and pour water in which saffron has been dissolved; they wash the child's feet with it and drink the water that is left in the vessel. Instantly a document is drafted reporting what happened, and the witnesses sign it. This document is called *manchinircani-chitou.*

If the husband and wife have children of their own at a later time, these children become subordinate to the adopted child, whereas the latter enjoys the privileges of an eldest child; the law does not in any way distinguish between adopted and natural children. It even happens quite often that parents are more fond of the adopted son than of their own children; [497b] they think that the gods, moved by their virtuous act of adopting a child, gave them children and worldly goods which they would not otherwise have.

There is another mode of adoption which does not involve the same advantages, but which is not therefore less peculiar. When a father and a mother who have lost their child meet one that resembles their own, they beg him henceforth to regard them as his father and mother. The child does not normally fail to consent to this; in that case the adoption is a fact. In the language of the land this is called *oppari pirieradou.* The peculiar thing is that, by way of *oppari*, a choutre may take a brame as his son, if the latter resembles one of his deceased children, and the brame will call him his father. However, since they belong to different castes, they are never to eat together.

What has been said of the father and the mother with regard to a son adopted by *oppari*, also applies to brothers and sisters who adopt in the same way him or her who resembles one of their brothers and sisters whom death took away from them. From that moment they treat them like brothers and sisters ; they assist them whenever necessary ; they share in their good fortunes and misfortunes. The Indians say that in this way people ease to a large extent the grief caused by the loss of their close relatives, for they discover in those they adopt new children, new brothers, new sisters. However, this kind of relationship ends with the death of the adopters ; its effects do not pass to their children.

FIFTH MAXIM.

Orphans shall be treated like the children of those to whom they are entrusted.

One of the wisest regulations in India is the one regarding orphans. If they have uncles and aunts, they are raised like the other children of the house, for by law uncles and aunts are considered to be the fathers and mothers of their brothers' and sisters' children. The putative father is held to provide for them in the same way he provides for his other children, to marry them off when they come of age, and to spend whatever is necessary to prepare them for earning a living.

It is as a result of this custom that, when a man loses his wife, he does whatever he can to marry the sister of the deceased [498a] They consider this an excellent maxim, for, they say, in this way there is no step-mother, and the children of the deceased sister invariably become the children of the living sister. They cannot be convinced of the equity of ecclesiastic law which forbids a man to re-marry the sister of his deceased wife "Do you not see, they tell us, that if the man does not marry his wife's sister, he has to marry another girl, who is bound to be a real step-mother. and who will not fail to wrong her husband's children to favor her own. On the contrary, if the sister of the deceased marries her brother-in-law, who is a widower, the children of the elder sister will always be considered her own."

Finally, if an orphan has neither elder brother, nor uncle, or aunt, a meeting of relatives is called at which someone is appointed to care for him. They note down what the orphan's father left behind, and one is forced to return it to the orphan as soon as he comes of age. Those who raise orphans make them earn a living as soon as they are able to work; if they are intelligent, they are sent to school, to study reading, writing, and arithmetic.

SIXTH MAXIM.

Whatever crime a child may have committed against his father, he cannot be disinherited.

However strange this maxim may appear, it prevents an infinite number of lawsuits. In Europe it is often very difficult to prove that a father who disinherits his son, does so for a valid reason. Assuredly, this power of the father together with the fear of being disinherited might keep children within the line of duty. Yet, one cannot deny that there are cases in which hate alone makes fathers abuse their powers.

Anyhow, the Indians fancy that their custom is a very wise one, and perfectly equitable. Thus if a son beats his father, if he wounds him, or, even worse, if in a moment of anger he threatens his father's life without however realizing his intentions, the father must nevertheless forgive him. If it happens that a father on his death bed declares that one of his children be excluded from his succession because of bad treatment received from him, [498b] the brothers who claim to execute their father's will will be convicted by any law court in India. When one tells Indians that it is immoral for a father not to be able to deprive of his rights a son by whom he has been disdained and insulted, they reply that, on the contrary, nothing is more disgraceful than seeing a father die while hating his children. "It is a father's duty, they say, to pardon his son, however ungrateful and wicked he may be. After all, was the son not born from his father? So he is really a part of him. Have you ever seen a man cut off his right hand because it had cut off his left hand?"

For the same reason a child cannot disinherit his father, however unreasonable the latter may have been toward him. Thus if an only son, who is married, dies without leaving children behind but with an important estate, it is his father who becomes his heir; he cannot for any reason be excluded from the inheritance.

SEVENTH MAXIM.

The father shall pay all the debts contracted by his children; children shall equally pay all the debts of their father.

This is a general rule, which is very helpful in expediting lawsuits concerning these matters. Yet, the way the Indians explain it, the rule is rather surprising. After all, according to this custom, if a child is dissolute, and if he borrows all over while handing out bonds in due form, the father is bound to pay his debts. It does not serve any purpose to tell them that the son does not deserve pardon, for the money which he borrowed only served to encourage his debauchery; they reply that the father's kindness prevents him from being so rigorous. The same rule also applies to debts contracted by the father: they shall equally be paid by the children. Even if one were to prove that the father had used the money he borrowed for extravagant expenses unworthy of an honest man, and even if the son were to renounce the inheritance, he would still be obliged to pay his father's debts.

The same reasoning applies to debts contracted by one of the brothers before partition of the estate; [499a] the eldest must pay them, and the one who acted wastefully does not, therefore, forfeit his equal share in the common stock. The justification for this kind of behaviour lies in another maxim, which the Indians hold in high esteem, namely that, after the father's death, the eldest son becomes like a father to his brothers. In fact, the other brothers throw themselves at his feet, and he regards them as his children And, even as the father must pay the debts of his children, the eldest brother, who is like a father to his brothers, is equally liable to pay their debts. All this applies before partition only ; but then, partition always comes very late. The rule does not extend to daughters : the father is not at all liable to pay their debts, nor is the brother bound by those of his sisters.

It is these general maxims, Sir, that serve as substitutes for laws in India ; it is these that are followed in the administration of justice. There are other more specific laws which are applicable within each caste. Since these would lead me too far, they shall be the subject of another letter which I shall be honored to write you.

RICHARD W. LARIVIERE, University of Pennsylvania

A SANSKRIT *JAYAPATTRA* FROM 18TH CENTURY MITHILĀ

More than half a century ago,[1] K. P. Jayaswal published a decision of a Hindu court which provides us with one of those rare glimpses into the actual "law of the land" in the days before the British influence could possibly have had much effect in Mithilā, the region where this decision was made.[1a] The *jayapattra*[1b] is dated "Saka 1715, Tuesday, the thirteenth day of the bright half of Jyaiṣṭha" which Jayaswal calculated as June 10, 1794[2]. A facsimile of the manuscript was reproduced along with Jayaswal's transliteration from the Maithilī script into devanāgarī and his curiously distorting translation. The following transliteration and translation of the *jayapattra* is based on that facsimile.

In order that we may see the extent to which this late document conforms to the description of such documents in the *dharmaśāstras*, we should first have a look at what these texts say on the subject. Aparārka on *Yājñavalkyasmṛti* 2.84 quotes Nārada as follows—

सकलं पूर्वपादं च सोत्तरं सक्रियं तथा ।
सावधारणकं चैव तज्ज्ञेयं जयपत्रकम् ॥
नृपानुज्ञातलिखितः संश्राव्यो ऽर्थश्च पक्षयोः ।

---

[1] K. P. Jayaswal, "A Judgement of a Hindu Court in Sanskrit" In the *Journal of the Bihar and Orissa Research Society*, volume VI, part II (1920), pages 246-258.

1. (a) K. K. Basu "Administration of Justice in Bhagalpur in Pre-British Days" in the *Journal of the Bihar and Orissa Research Society*, 20 (1934), pages 275-278.

1. (b) The etymologically correct spelling is *jayapattra*; however, for sake of fidelity to the authors whom I quote, I will transliterate the word as it occurs in the text—*jayapatra*, *jayapatraka*, etc.

[2] Jayaswal, *op. cit.*, page 256.

सभ्यैर्निर्धारितः पश्चाद्राज्ञा शास्यः स शास्त्रतः ॥
प्राप्तं द्विगुणदण्डं तु दण्डयित्वा पुनस्ततः ।
जयिने वापि देयं स्याद् यथावज्जयपत्रकम् ॥
मध्ये यत्स्थापितं द्रव्यं चरं वा यदि वा स्थिरम् ।
पश्चात्तत्सोदयं दाप्यं जयिने जयपत्रकम् ॥

That is known as a *jayapatraka* which contains the complete plaint, the reply, the deliberation, and the decision.

It contains that which was written at the order of the king and that which is to be heard on both sides, and that which was decided by the jurors. It should afterwards be proclaimed by the king according to the *śāstras*.

A proper *jayapatraka* would be that which contains the twofold punishment, and which should then be duly given to the victor when the punishment has been carried out. The *jayapatraka* contains the decision about that item, either movable or immovable, which is set in the middle (i.e is in dispute) and which later should be given to the victor along with the decision.

Aparārka quotes *Vṛddhavasiṣṭhasmṛti* at the same place—

यथोपन्यस्तसाध्यार्थसंयुक्तं सोत्तरक्रियम् ।
सावधारणकं चैब जयपत्रं तदिष्यते ॥
प्राड्विवाकादिहस्ताङ्कं मुद्रितं राजमुद्रया ।
सिद्धेऽर्थे वादिने दद्याज्जयिने जयपत्रकम् ॥

That is to be considered a *jayapatra* which includes the matter to be proved as it has been explained, the reply and the trial as well as the deliberations.

The *jayapatraka* signed by the chief judge, etc. and imprinted with the royal seal, should be given to the victorious pleader when the matter is settled.

Batakrishna Ghosh's little compilation of verses attributed to *Vyāsasmṛti*[3] has the following three verses—

---

[3] Batakrishna Ghosh, editor, *Vyāsa-smṛti (Vyavahāra Chapter)* Bhāratī Mahāvidyālaya Publications Law Series—1. Calcutta, 1944.

व्यवहारान् स्वयं दृष्ट्वा श्रुत्वा वा प्राड्विवाकतः ।
जयपत्रं ततो दद्यात् परिज्ञानाय पार्थिवः ॥ ५०
पूर्वोत्तरक्रियापादं प्रमाणं तत्परीक्षणम् ।
निगदं स्मृतिवाक्यं च यथासभ्यं विनिश्चितम् ।
एतत् सर्वं समासेन जयपत्रे विलेखयेत् ॥ ५१
जङ्गमं स्थावरं येन प्रमाणेनात्मसात्कृतम् ।
भागाभिशापसन्दिग्धे यः सम्यग्विजयी भवेत् ।
तस्मै राज्ञा प्रदातव्यं जयपत्रं सुनिश्चितम् ॥ ५२

Having seen the proceedings himself or having heard of them from the chief judge, the king should then give a *jayapatra* in recognition (of them).

He should succinctly record all of this in the *jayapatra*—the plaint, the reply, the trial, the evidence and its testing, the testimony, the texts cited, and the deliberations of the juror. The king should give a clearly decided *jayapatra* to the one who would be completely victorious through evidence which establishes movables or immovables as his own in a dispute involving partition or an accusation.

Kātyāyanasmṛti as compiled and translated by P. V. Kane[4] contains the following—

अर्थिप्रत्यर्थिवाक्यानि प्रतिज्ञा साक्षिवाक्तथा ।
निर्णयश्च यथा तस्य तथा चावधृतं स्वयम् ॥ २५९
एतद् यथाक्षरं लेख्ये यथापूर्वं निवेशयेत् ।
अभियोक्त्रभियुक्तानां वचनं प्राङ्निवेशयेत् ॥ २६०
सभ्यानां प्राड्विवाकस्य कुलानां वा ततः परम् ।
निश्चयं स्मृतिशास्त्रस्य मतं तत्रैव लेखयेत् ॥ २६१
सिद्धेनार्थेन संयोज्य वादी सत्कारपूर्वकम् ।
लेख्यं स्वहस्तसंयुक्तं तस्मै दद्यात्तु पार्थिवः ॥ २६२
सभासदश्च ये तत्र स्मृतिशास्त्रविदः स्थिताः ।
यथालेख्यविधौ तद्वत् स्वहस्तं तत्र दापयेत् ॥ २६३

---

[4] P. V. Kane, *Kātyāyanasmṛti on Vyavahāra (Law and Procedure) Text (reconstructed), Translation, Notes and Introduction*. Oriental Book Agency, Poona : n.d.

अनेन विधिना लेख्यं पश्चात्कारं विदुर्बुधाः ।
निरस्ता तु क्रिया यत्र प्रमाणेनैव वादिना ।
पश्चात्कारो भवेत्तत्र न सर्वासु विधीयते ।। २६४
अन्यबाद्यादिहीनेभ्य इतरेषां प्रदीयते ।
वृत्तानुवादसंसिद्धं तच्च स्याज्जयपत्रकम् ।। २६५

259-264. The statements of the plaintiff and defendant, the averment (of the plaintiff as to the relief claimed), the statements of the witnesses, the decision of the dispute, how the matter was considered by himself (by the king), these should be set out in their order of writing. First the statement of the plaintiff and the defendant should be set out, after the words of the sabhyas, of the judge or of the *family* members and therein also should be written the decision of the case according to the rules of Smṛti and the (final) opinion (of the king). The plaintiff is to be put in possession of the matter that he succeeded in proving after being commended (on his success) and the king should give him a writing under his own hand and he should make the members of the court who were there (at the time of the hearing) and who are proficient in Smṛti to sign (the judgement) as in the case of (other ordinary) writings. A writing executed in this mode the wise declare to be 'paścātkāra'. Where the litigant discharges his burden of proof by resorting to the (prescribed) means of proof only, there (the document) is called paścātkāra ; the term is not applied to all (decisions in all matters).

265. That is *jayapatra* (a document recording victory in a litigation) which is given to those who are cast off (in their cause) because they aver something other (than what was first stated) and other hīnavādīs and which contains a recital of what happened.[5]

---

[5] One quibble which might be recorded here about Kane's translation of Kātyāyana has to do with the word *vādī* in verse 262 which Kane translates as "plaintiff". It would be misleading if the reader were to understand that a *paścātkāra* could only be given to the plaintiff (and not to the

In light of these descriptions it is clear that the present *jayapattra* conforms closely to the classical norm. The plaint (**1**)[6], the reply (**2**), deliberation (**3**, **15**, **18-23**), the awarding of the item in dispute and the awarding of the *jayapattra* to the victor (**25**) and the signature by the "jurors" are all found here. What is not found here is the signature of the king or any mention of the king or his royal seal. Nor does the author of this *jayapattra* refer to himself as a *prāḍvivāka*, "chief judge". It seems, however, that Sacala Miśra, the author of this *jayapattra* was a *prāḍvivāka* to the court of Madhu Singh, Rājā of Tirhut.[6a] The mention of the officers *Dharmādhyakṣa* and *Paṇḍita* (**25**) further indicates that this *jayapattra* is the record of a royal court and not a decision of a lesser court such as the *kula* (family or village court), *śreṇi* (guild court), and *pūga* or *gaṇa* (local assemblies).[7]

The absence of the royal seal may indicate that this court was not authorized to use it.[8] Such authorization was a distinguishing criterion in the classification of courts according to *Bṛhaspatismṛti* 1.57[9]—

प्रतिष्ठिताप्रतिष्ठा च मुद्रिता शासिता तथा ।
चतुर्विधा सभा प्रोक्ता सभ्याश्चैव तथाविधाः ॥

---

accused) since this word, *vādin*, means here simply "litigant"—as Kane has correctly translated it in 263 and 264. For a different use of *paścātkāra cf.* Kauṭilya 3.19.22.

[6] The bold-face numbers refer to the divisions of the text or to the corresponding notes following the text.

[6a] K. P. Jayaswal, *op. cit.*, pages 256-258. Upendra Thakur, "Some Aspects of Slavery in Mithilā in the 17th and 19th Centuries" in the *Journal of the Bihar and Orissa Research Society*, 44 (1958) page 48 identifies him as Rājā Mādhava Siṃha of the Khaṇḍavalā dynasty of Mithilā.

[7] *cf.* Medhātithi on Manu 8.2. for a discussion of these courts.

[8] For an instance of the authority for the use of seals, *cf.* V. T. Gune *The Judicial System of the Marathas*, Deccan College Dissertation Series No. 12, Poona ; 1953, pages 375-376. This is N. J. Lumsden's 1819 account of the administration of justice under the Peshwas.

[9] K. V. Rangaswami Aiyangar, *Bṛhaspatismṛti (Reconstructed)*, Gaekwad's Oriental Series No. 85, Baroda : 1941. All citations are from this reconstruction.

> The court is said to be of four kinds—stationary, not stationary, having the king's seal, and ruled (by the king). Judges are of the same kinds.

There are nine *jayapattras* from the same region and era which were published by A. Banerji-Sastri.[10] These, too, did not bear any royal seal apparently, but because of their common origin it is likely that they are judgements of courts of a similar nature to that of the present *jayapattra*.

The *jayapattra* was to be given to the victor in the dispute (25). Its purpose was to provide the victor with proof of the outcome of his case so that if he was later challenged again he could plead *prāṅnyāya* (former judgement) and have proof to back his statement. *Bṛhaspatismṛti* 4.3—

प्रतिज्ञां मावयेद् वादी प्रत्यर्थी कारणं तथा ।
प्राग्वृत्तवादी विजयं जयपत्रेण भावयेत् ॥

> The plaintiff should prove his averment, the respondent his plea, and the one who claims a former action should prove his victory with a *jayapattra*.

If the purpose of a *jayapattra* was to be a record of victory for the successful litigant, it may be assumed that such documents were carefully preserved among a family's valuables. This raises the question of why so few *jayapattras* have come to light. It could not be expected that ancient *jayapattras* would have survived. Unlike manuscripts which could be copied over and over, the *jayapattra* was only valid when signed by a judge who presided at the court. This precluded their preservation by copying, and unless they were recorded on materials more durable than palm leaf or paper, they would suffer the same fate as early manuscript materials—decay and disappearance.[11] Still, we have large numbers of manuscripts from the medieval period, for example, so *jayapattras* might be expected to have survived from that period and be available in abundance. In general, however, they are not. One reason for this may lie in the status for Hindu courts in the centuries immediately preceding the British intrusion into the indigenous Indian judicial systems. Much of India was increasingly under Mughal hegemony, and while civil and criminal matters may well have been decided according to the *śāstras*, it seems likely that they were decided in Mughal courts rather than in Hindu courts with their attendant procedures.

---

[10] *Journal of the Bihar and Orissa Research Society*, volume xxviii, part I (1942), pages 104-111.

[11] For a *jayapattra* from Java written on a copper-plate in the year 928 A. D, see J. Brandes, "Een Jayapatra of Acte van eene Rechterlijke Uitspraak van Śaka 849, "in *Tijdschrift voor Indische Taal-, Land-en Volkenkunde*, deel xxxii (1889) pp. 98-149. The contents of a *jayapatra* are

Keeping in mind the Mughal hegemony, it is interesting to note a passage from the *Vyavahāranirṇaya* of Varadarāja[12]—

> कुलव्यवहारे च जयपत्राभावात् । "कुल्याः कुलविवादेषु
> विज्ञेयास्तेऽपि साक्षिणः" इति वचनात् । तैरेव
> व्यवहारदर्शिभिः भावयामीति द्वितीयः ।
>
> The second (kind of "plea of previous judgement") is "I prove it only through the witnesses to the trial." This is because of the statement—"In family disputes even members of the family shall be known as the witnesses." (*Nāradasmṛti* 1.152). This is because there is no *jayapatra* in a trial in a family court.[13]

It is possible that under the Mughals, since the court of the king would not be a Hindu court, that there were fewer *jayapattras* simply because there were fewer courts in existence which were entitled to award *jayapattras*.

---

included in an inscription of the seventeenth century found at Abbinahole in Karnataka : see T. V. Mahalingam, *Administration and Social Life Under Vijayanagar,* University of Madras : 1940, page 122. See also the *Annual Report of the Mysore Archaeological Dept. for the Year 1918*, Bangalore : 1919, page 54 for an epigraph in the Ranganatha Temple at Abbinahole dated 1664. It is a "*Jayarekhapatra*".

[12] *Vyavahāranirṇaya of Varadarāja* edited by K. V. Rangaswami Aiyangar and A. N. Krishna Aiyangar, Adyar Library, 1942, page 53,

[13] The meaning of *kula* is not beyond doubt. Medhātithi on Manu 8.2 says it means groups of relatives, but admits that some define it as "impartial persons", Aparārka on *Yājñavalkyasmṛti* 2.30 says it is a

The Mughal hegemony did not, of course, prevent a continuation of the scholarly activity in the field of *dharmaśāstra.* In fact this was a period of significant scholarly activity on the part of *nibandhakāras* such as Mitra Miśra, Nīlkaṇṭha Bhaṭṭa, Anantadeva, Keśava Paṇḍita, etc., but of all of these only Keśava had the patronage of an independent Hindu ruler and only Keśava was alleged to have taken a role in administration when he became the *daṇḍādhyakṣa* under Śaṁbhujī, the son of Śivājī.[14] Whether Keśava actually was a *daṇḍādhyakṣa* or not is doubtful,[15] and even the extent of his influence on the rule of Śambhujī and his successors is impossible to determine because of the lack of surviving evidence.[16]

In Mithilā the Mughal rule was not the oppresive and

---

court of farmers. The *Mitakṣarā* on the same verse says that it means various kinds of relatives. The *Vyavahāranirṇaya* (page 85) says that some form of a record of the decision is to be made in *kula* courts—कुलादिभिनिर्णये जयपत्राभावान्निर्णयपत्रं तत्र कार्यं प्रत्तपत्रमिति यावत् । "In a decision by the *kula* etc. since there is no *jayapattra* there the litigation should include a document of the decision, i.e. a document of what was granted (or, the variant वृत्तपत्र, a document of what transpired)." The distinction between these documents is not explained.

[14] B. B. Majumdar, "Hindu Religion (a) General Review" in R. C. Majumdar, general editor, *The History and Culture of the Indian People—The Mughal Empire,* Bhāratīya Vidyā Bhavan, Bombay ; 1974, page 634.

[15] V. S. Bendrey, *Keśava Paṇḍita's Daṇḍanītiprakaraṇam or Criminal Jurisprudence (XVIIth Century)*, The Bhārata Itihāsa Saṃśodhaka Maṇḍala, Poona, Svīya-Granthamālā Pustaka no. 59, Poona, 1943, Page 19.

[16] V. T. Gune, *op cit.*, page xxxii. From the period 1400-1800 A. D. there are a great many records of decisions by deliberative bodies in Mahārāṣṭra. These *mahzars* or *mahajaras* are written in Marāṭhī and Persian and appear to represent and interesting synthesis of indigenous, Mughal, and *dharmaśāstra* legal practice. Few of these texts cite Sanskrit sources, and in those instances where Sanskrit sources are cited it is with occasionally unusual results. See Graham Smith and J. Duncan M. Derrett, "Hindu Judicial Administration in pre-British Times and its Lesson for Today" in the *Journal of the American Oriental Society*, 95.3 (1975) pages 417-423 in which there is a punishment of death for using an ordeal when a witness is available mentioned in a *mahzar.*

powerful force that it was in places such as Bengal and Awadh. Mithilā was fortunate never to have been totally subjugated for any significant period of time, and while the Mughal threat was continually felt, a Hindu dominion was maintained in Mithilā more or less continuously throughout the medieval period.[17]

The *jayapattra* is not a transcript of the trial. It is a general summary of the pleas, evidence, and the verdict. The summary is brief, but not so brief that the reasoning of the court cannot be reconstructed. In working through the *jayapattra* and the notes at the end it will be apparent, indeed the conclusion is unavoidable, that this decision and the procedure followed in arriving at the decision are in clear conformity to the classical *dharmaśāstra,* proving that, at least in 1794 in Mithilā, the law described in the texts and commentaries was the law of the land.

---

[17] For a discussion of the uncertain question of the extent of Mughal control over Mithilā from the thirteenth century onwards see Upendranath Thakur, *History of Mithilā*, Mithilā Institute, Darbhanga, 1956, pages 391-423.

TEXT

श्रीराम .

सम्मतिरत्र श्रीकलानाथस्य
श्रीरत्नपतेस्सम्मतिः
सम्मतिरत्र श्रीभवनाथशर्म्मणः

सम्मतिरत्र श्रीषडाननेश्वरस्य
सम्मरित्र श्रीवाछस्य
सम्मरित्र श्रीउमानाथस्य
सम्मतिरत्र श्रीमथुरनाथशर्म्मणः

(1) अर्थिप्रत्यर्थिभावमापन्नौ वल्लीशर्म्मजानकीशर्म्मप्रभृतिनानांशिकसहित-श्रीतुलारामशर्म्मश्रीमणिनाथशर्म्मणौ मत्सदस् समागतौ तत्र सैतोनाम्नीं चेटीं मतीनाम्नो मद्दासस्य पुत्रीं नानापुत्रयुतां मणिनाथशर्म्मा मह्यं प्रयच्छत्वित्यर्थिनस्तुलारामशर्म्मणो भाषायां (2) मन्निकटे सान्वया सैतोनाम्न्यस्ति सा कीदृशी कथमागतेति न जानामीति प्रत्यर्थिनो मणिनाथशर्म्मणो मिथ्योत्तरे (3) प्रमाणायादिष्टोऽर्थी तुलारामशर्म्मा

प्राङ्न्याये कारणोक्तौ तु प्रत्यर्थी साधयेत्क्रियां ।
मिथ्योत्तरे पूर्व्ववादी प्रतिपत्तौ न सा भवेत् ॥ (Vyāsa 1.29)

इति व्यासवचनात् । (4) अथ तुलारामशर्म्मा प्रतिज्ञातमतीदासपुत्रीत्वमेव* प्रमाणमुपन्यस्तवान् (5) ततः प्रत्यर्थी मणिनाथशर्म्मा गौरीववाटिकाग्रहणयोग्यायां दासपुत्रयां व्यभिचारित्वेन चेटीत्वमसाधयंदिदमप्रयोजकमित्यूचिवान् (6) न च दासपुत्रीत्वरूपसामान्यधर्म्मस्यागमकत्वेऽपि मतीदासपुत्रीत्वमेव तथा स्तामिति वाच्यं मतीपुत्रीमात्रस्य पक्षत्वेनासाधारण्यात् । (7) अथार्थी तुलारामशर्म्मा यादोनाम्नी सैतोमाता मम चेटीति चेटीपुत्रीत्वं गमकमेवेत्यवादीत् (8) ततस् सैतोमातरि यादोनाम्न्यां चेटीत्वं साधयतु भवानिति प्रत्यर्थिना मणिनाथशर्म्मनोक्तम् (9) तुलारामशर्म्मा दिनान्तरे तत्साधयिष्य इति प्रतिज्ञाय ययौ (10) पुनः पञ्चदश-दिनानन्तरमागत्याष्टपञ्चाशदधिकैकादशशतमिते यवनसंवत्सरे विवादाधिकरणैकाधिकद्वादशशतयिताद्वत्सरात् त्रिचत्वारिंशद्वर्षपूर्व्वंस्मिन्काले दीपचन्दगणाधिपरामवक्ससहायो बलात्कारेण सैतोनाम्नीं चेटीं स्वग्रामं नीत्वा मासत्रयपर्यन्तं दासीकर्म्मणि नियोजितवानहमित्येव प्रमाणमित्यर्थी तुलारामशर्म्मोक्तवान् (11) ततोऽष्टमदिवसे बलात्कारेण सैतोनाम्नी नीता किन्तेन न वा बलात्कारोऽपि प्रामाणिक इति प्रत्यर्थिना मणिनाथशर्म्मणा कथितो (12) ऽर्थी तुलारामशर्म्मा

---

* the manuscript read त्वमैव

सर्व्वत्र प्रकृतविवादविषये मम यद्यपि पत्रं नास्ति तथापि पात्रं वजहानामानं निजदासमेकं प्रमाणं निगादयिष्ये द्वितीयरविवार इति प्रतिज्ञातवान् गतवांश्च गेहं (13) अथ प्रत्यर्थिना वारम् वारमाहूतोऽपि मासद्वयपर्य्यन्तम् नागतोऽपि पश्चादधिकप्रयासादागतोऽर्थी तुलारामशर्म्मा (14) ततः पुनर्विचारारम्भेऽर्थिनो दास एकः शतवर्षाधिकविवादकालार्द्धवर्षवयस्कः साक्षी न मन्यत इति प्रत्यर्थितो मणिनाथशर्म्मणो वाक्यं (15) युज्यते चैतत् एकस्साक्षी सर्व्वथा न ग्राह्यः ।

उभौ तु श्रोत्रिथौ ग्राह्यौ नैकं पृच्छेत्कदाचन । (Bṛhaspati 5.1)

इत्यादिशङ्खबृहस्पतिवचनात् (16) अथ लौकिकप्रमाणाभावेऽपि मया पण्डितकथितेनालौकिकेन प्रमाणेन चेटी ग्रह्यते नान्ययेत्यर्थिनस्तुलारामशर्म्मणो वाक्ये (17) नीरवानवरतार्थिसन्निधानप्राणनाथशर्म्ममणिनाथशर्म्मरुपनाथठक्कुरमधुसूदनठक्कुरपुरुषचतुष्टयकृतशतवर्षाधिके भोगे जागरुके नालौकिकं प्रमाणं मया मन्यत इत्युक्तं यदि संभवत्यत्राप्यलौकिकं तदा पत्रपात्राद्यभावे वर्षसहस्रानन्तरेऽपि विवादे कुतो न प्रसज्यत इति+ प्रतिवादिपुष्टं मणिनाथशर्म्मण उत्तरं (18) सपार्षदप्राड्विवाकानुमोदितञ्च

अनुमानाद् गुरुः साक्षी साक्षिभ्यो लिखितं गुरु ।
अव्याहता त्रिपुरुषी भुक्तिरेभ्य' गरीयसी ।। (Kātyāyana 315)

इति कात्यायनवचनात् (19) न चैवमनागममित्यादिबहुविधवचःव्याघात इति देशम् । (20) तस्य निश्चितागमाभाववद्वस्तुविषयकत्वात प्रकृते प्रत्यर्थिनस्वत्वे यथोक्तभोगरूपागमविश्चयसत्त्वात् (21) वस्तुतस्तु चौरेत्यादिश्रवणात् न्यूनतमभोगे भोगकर्तुः स्वत्वाभावविश्चये विवादकाले याते पश्चादपह्णवबलात्कारादिवा शतवर्षाधिकभुक्तवस्तुविषयत्वं तेषां वचनानामिति सम्यक् प्रतीमः । (22) कथमन्यथा सागममात्रभोगप्रामाण्ये प्रमाणपार्थक्येन भोगप्रामाण्यं मुनयो निबन्धकाराश्चोदाजह्रुः । (23) तस्माल्लौकिकप्रमाणाभावे भुक्त्युत्कर्षशालिस्थावरादावलौकिकप्रमाणप्रसरबाधकेन

स्थावरेषु विवादेषु दिव्यानि परिवर्ज्जयेत् ।
साक्षिभिर्ल्लिखितेनाथ भुक्त्या चैतान् प्रसाधयेत् ।। (Pitāmaha 39)

इति पितामहवचनेन हरिनाथोपाध्यायमिसरुमिश्रप्रभृतिनिबन्धकारव्याख्याते (24)

+The manuscript has the curious reading प्रतिबन्दि which is understood by Jolly and Jayaswal (JBORS vol. 7, p. 124) as प्रतिवंदि This must be taken as an error for the reading given in the text above, both Jolly and Jayaswal understood it this way.

नालौकिकप्रमाणाप्रसरे हीनप्रतिज्ञस्यार्थिनस्तुलारामशर्म्मणो वल्लीशर्म्मजानकीशर्म्मप्रभृतिनानानांशिकसहितस्य भङ्गमवधार्य (25) अत एव शतवर्षाधिकयथोक्तभोगरूपनिजचेटीत्वसाधकप्रमाणवेदकाय जयिने प्रत्यर्थिने मणिनाथशर्म्मणे जयपत्रं ददतो मम श्रीसचलमिश्रस्य गतमत्सरान् धर्माध्यक्षान् पण्डितान् समुद्दिश्य विज्ञापनमिदं ॥ शाके 1715 ज्यैष्ठशुक्लत्रयोदश्यां कुजे ॥

TRANSLATION

Srī Rāma

This has the approval of Śrī Kalānātha.
The approval of Śrī Ratnapati.
This has the approval of Śrī Bhavanātha Śarman.
This has the approval of Śrī Śaḍānaneśvara.
This has the approval of Śrī Vācha.
This has the approval of Śrī Umānātha.
This has the approval of Śrī Mathuranātha Śarman.

1. Śrī Tulārāma Śarman, along with his various co-sharers Vallī Śarman, Jānakī Śarman, etc., and Śrī Maṇinātha Śarman had assumed the status of plaintiff and respondent and had assembled in my court. Given the plea of the plaintiff, Tulārāma Śarman, "Maṇinātha Śarman should return to me the *ceṭī* named Saito who is the daughter of my male slave named Matī along with her various offspring," [and]

2. given the denial of the respondent, Maṇinātha Śarman, "Someone named Saito is with me, along with her children. I do not know what sort she is or how she came."

   (Under these circumstances) the burden of proof is on the plaintiff Tulārāma Śarman according to the statement of VYĀSA—

3. In the case of a former judgement or a reply by way of exception the burden of proof is on the respondent. In the case of a denial it is on the plaintiff, and if there is a confession there is no burden of proof. (Vyāsa 1.29)

4. Now, Tulārāma Śarman offered as proof the fact that she (Saito) was the daughter of the aforementioned slave, Matī.

5. Then, the respondent, Maṇīnātha Śarman, replied, "He established *ceṭī*-status deviously for a slave-daughter who should go under the name of *gaurīvavāṭikā*. This does not prove anything."

6. "Nor should it be said, 'Even if the general quality—namely, the status of being a slave's daughter—is uncertain, the very fact of her being the daughter of the slave Matī must be so', because it is precisely the allegation that she is the daughter of Matī that must be proved."

7. Next, the plaintiff, Tulārāma Śarman, said, "Saito's mother, named Yādo, is my *ceṭī*. Therefore it is perfectly clear that she is a daughter of a *ceti*."

8. Then the respondent, Maṇinātha Śarman, said, "Sir, prove that the one named Yādo, the mother of Saito, is a ceṭī."

9. Tulārāma Śarman promised, "I will prove that some other day," and he withdrew.

10. When the plaintiff, Tulārāma Śarman returned after fifteen days, he stated, "This is the proof. In 1158 of the Yavana era, 43 years before 1201, the date of this legal dispute, I, with the assistance of Dīpacanda Gaṇādhipa and Rāma Baksa forcibly took the *ceṭī* named Saito to my village and compelled her to work as a slave for three months."

11. Then, a week later, the respondent, Maṇinātha Śarman, said, "The one named Saito was taken by force. Even if she was taken by force, that does not prove anything."

12. The plaintiff, Tulārāma Śarman, promised, "Even though I have no documentary evidence at all with regard to the original dispute, nevertheless, on the second Sunday I will have one of my worthy slaves, Vajahā by name, testify," and he went home.

13. Now, the plaintiff, Tulārāma Śarman, was summoned time and again for two months by the respondent. He did not come ; finally, after much effort, he came.

14. Then, when the deliberations had begun again, the respondent, Maṇinātha Śarman, made this statement, "This single witness is the plaintiff's slave, he is half the age of dispute—more than 100 years—and he is not accepted."

15. And this is correct. A single witness is never to be accepted according to the statement of ŚANKHA and BṚHASPATI——

> But two should be accepted if they are *śrotriyas*. He should never question a single one (Bṛhaspati 5.1)

16. Now the plaintiff, Tulārāma Śarman, said, "Since there is no ordinary proof, I shall take the *ceṭī* by extraordinary proof as explained by the Paṇḍita and not otherwise." To this statement

17. the strong reply of the respondent, Maṇinātha Śarman, was, "I do not accept extraordinary proof when there has been obvious possession for four generations—more than one hundred years—by Prāṇanātha Śarman, Maṇinātha Śarman, Rūpanātha Ṭhakkura, and Madhusūdana Ṭhakkura in the presence of the plaintiff who was always silent," and "If extraordinary proof is possible *here*, then it would be applicable even in a dispute where there were no documents, or competent witnesses, etc. but uninterrupted possession for one *thousand* years."

18. And the chief judge along with the members of the judicial assembly agreed with it according to the statement of KĀTYĀYANA——

> A witness is weightier than inference, a document is weightier than a witness, the uninterrupted possession for three generations is weightier still. (Kātyāyana 315)

19. Nor should it be pointed out that in this way this is in contradiction with several statements such as the one beginning "Without title...",

20. because that relates to a case wherein there is no clear title at all, whereas in the present case the respondent has a clear title of ownership in the form of possession as has been prescribed.

21. Actually, we are unanimously convinced when we say that because of the passage "a thief..."etc. that these verses are applicable in cases where a man has been shown not, to be the owner (in a trial), then soon after that dispute, comes into possession and keeps possession for more than one hundred years by deceit, force, etc.

22. Otherwise, if possession was valid with a title only, why would the munis and the authors of legal compendia declare the validity of possession as a distinct mode of proof ?

23. Therefore when there are no ordinary means of proof for immovables, etc., but when possession has been amply drawn out, the use of extraordinary means of proof is opposed, according to the statement of PITĀMAHA which has been explained by HARINĀTHA UPADHYĀYA, MISARU MIŚRA and other authors of legal compendia—

> In disputes about immoveables he should avoid ordeals. He should settle them by means of witnesses, documents, or possession. (Pitāmaha 39)

24. Since there is no use of extraordinary means of proof I do determine that the plaintiff, Tulārāma Śarman, along with his various co-sharers, Vallī Śarman, Jānakī Śarman, etc. acknowledges the weakness of his case and is defeated.

25. I, Śrī Sacala Miśra, give the document of victory to the victorious respondent, Maṇinātha Śarman, for his presentation of evidence which establishes the status of his *ceṭī* by means of possession for more than one hundred years as has been prescribed. This declaration is in behalf of the impartial Dharmādhyakṣas and Paṇḍitas.
Śaka 1715, Tuesday, the thirteenth day of the bright half of Jyaiṣṭha.

NOTES

(1) This contains the plea and it is clear that the value involved in the plaint is considerable since a slave *and* an unspecified number of her offspring are involved. This plea is a brief one according to the *dharmaśāstras*. *Kātyāyanasmṛti* 127-128, for example, requires ten facts to be included in a plea involving immovables *(sthāvara)*—which includes slaves: the country, the place, the situation, the caste, the name, the dwelling-place, the amount, the name of the field, the name of the father, and the name of the grandfather, and mention of previous kings. Not all of these facts are applicable in this case, of course, but other requirements such as those given in Kauṭilya's *Arthaśāstra* 3.1 are applicable. It requires the year, season, month, fortnight, day, documents, the court, the debts, the country, village, caste, family and names of the plaintiff and the respondent. In fact, *Kātyāyanasmṛti* 138 says that failure to mention time, place, amount, and evidence makes a plaint unacceptable—[18]

देशकालविहीनश्च द्रव्यसंख्याविवर्जितः ।
साध्यप्रमाणहीनश्च पक्षो नादेय इष्यते ॥

> That plaint is regarded as unacceptable which lacks (the mention of) the time and place (of the cause of action), that omits the (statement of the) material (dravya) claimed or the amount and that is wanting in the dimensions of the thing claimed. (Kane's translation)

A *ceṭī* is a female slave, but of what sort is not clear here. Pāli sources seem to indicate that a *ceṭaka* was somehow different than a *dāsa*. In some instances the two terms are mentioned together[19] and a *ceṭaka* seems to be a domestic servant. In other places, a person who is clearly a slave is called a *ceṭaka.*[20]

---

[18] In a strict sense the statement in the plea that the *ceṭī* should be returned is unnecessary, cf. *Vyavahāracintāmaṇi* 90.5-6 (edited by Ludo Rocher, Gent : 1956).

(2) The reply of Maṇinātha Śarman seems to have been given immediately upon hearing the plaint of Tulārāma. Aside from the fact that Maṇinātha probably already knew what he was going to say in his reply, it is also in keeping with a stipulation found in the *Mitākṣarā* on *Yājñavalkyasmṛti* 2.12 which explicitly states that a reply must be given at once (सद्य एव i.e. न कालप्रतीक्षणं कुर्यात्) in a dispute over ownership of a female slave (दास्यां स्वत्वविवादे). This reply is the first indication that we have of the fact that Maṇinātha, the respondent, is well-versed in the law. The almost facetious innocence of Maninātha's reply is a type of denial (मिथ्योत्तर) specifically mentioned in *Vyāsasmṛti* 1.28 –

> मिथ्यैतन्नाभिजानामि मम तत्र न सन्निधिः ।
> अजातश्चास्मि तत्काले एवं मिथ्या चतुर्विधा ॥

> The four kinds of denial are: (1) "This is not true" (2) "I don't know", (3) "I wasn't there" and (4) "I wasn't born at that time".

Maṇinātha's claim of ignorance refuses to contradict anything in the plea of Tulārāma, and the result of this reply is that the burden of proof will fall on Tulārāma.

(3) The burden of proof in Hindu law can be said to fall —with a few exceptions—on the party whose plea requires the

---

[19] V. Fausboll, editor, *The Jātaka Together with its Commentary*, Trübner, London : 1896, volume VI, page 135.

[20] Dev Raj Chanana, *Slavery in Ancient India*, People's Publishing House, New Delhi : 1960, page 137. Chalmers in E. B. Cowell, editor, *The Jātaka or stories of the Buddha's Former Births*, Cambridge University Press : volume I, page 1895, page 99 has translated *dāsiputtaceṭaka* (from Fausboll, *op. cit.*, volume I, page 225 of the Nandajātaka) as "servant of a slave-wench's son", Shivanath Bose, "Slavery in the Jātakas," in *Journal of the Bihar and Orissa Research Society* 9 (1923) pages 369-375.

proof of some positive proposition. The wording of Maṇinātha's denial may at first seem a bit uncertain, but as it stands he cannot be asked to prove anything. That he has the *ceṭī* is an established fact, and his claim of ignorance, while hard to believe, is not likely to be subject to proof and serves to underscore the responsibility of the plaintiff to establish the facts. The clear statement of the burden of proof which is contained here was an important part of the trial, and, according to the *Mitākṣarā* on *Yājñavalkyasmṛti* 2.8, this deliberation by the judge to determine on whom the burden of proof should fall was called *pratyākalita*.[21]

(4) Tulārāma next offers as proof of his plea the fact that the female slave in question is the daughter of his male slave Matī.

(5) This reply can only be made sense of in light of the meaning of the term *gaurīvavāṭikā*. Unfortunately, the meaning of this term is not clear. It does not seem to exist in any modern vernacular language. After the publication of this *jayapattra* and K.P. Jayaswal's expression of puzzlement over the term,[22] Gaṅgānātha Jhā published a short note in which he gave the text of a document which uses the term *gaurīvavāṭikā*.[23] The document which Jhā describes is in Sanskrit and Maithilī and refers to itself as a *gaurīvavāṭikāpattra*. The text states that this *gaurīvavāṭikāpattra* is given by a certain Rāmabhadra Śarman to a certain Srī Kagālā Dāsa with the words (Jhā's translation) "The daughter of my slave Haraī by name Padumi, fair complexioned, who is

---

[21] This term is used in several different ways. *Bṛhaspatismṛti* 2.1 uses it as a synonym for the fourth part of a legal dispute, i.e. the decision. *Kātyāyanasmṛti* 31 uses it for the third part of the trial. The Mitākṣarā explicitly states that as it uses the word—deciding the burden of proof—it is not a *vyavahārapāda*. Vācaspati Miśra in *Vyavahāracintāmaṇi* 202.1 says that *pratyākalita* means inference.

[22] *op. cit.*, page 253. Jayaswal thought the text must be corrupt.

[23] Gaṅgānātha Jhā, "A Note on Sanskrit Judgments" in the *Journal of the Bihar and Orissa Research Society*, volume VII (1921) pages 121-124.

married to your son Śrī Kṛṣṇa—I have given unto you, after taking from you one rupee ; I have no connection with her." Thus it appears that a slave belonging to a *brāhmaṇa* is sold for a nominal price to another slave (?). The female slave is apparently already married to the son of the new owner. Jhā suggests that the fact that the previous owner says he has "given" the slave rather than "sold" her indicates that this is a deed of emancipation. Subsequently, two more such *gaurīvavāṭikāpattras* came to light.[24] Both of these documents were "deeds of transfer" of a slave girl for the purpose of marriage. The term clearly has something to do with the virginity of the slave woman, but whether it is to be analysed as *gaurī-iva-vāṭikā* (in which case the *vāṭikā* is a problem) or a *gaurī-vavāṭikā* (cf. *vāvāta* "the king's favourite wife", perhaps from √van ?) the exact meaning of the term remains unclear. In any case, there can be little doubt that the status or process of *gaurīvavāṭikā* involves some kind of change in the condition of the slave woman in question.

If our speculation about the meaning of this term is on the right track, then we might conclude that Maṇinātha's argument should be understood as follows : Tulārāma says that Saito, the female *ceṭī* belongs to him because she is the daughter of his slave Matī. This is not necessarily so, since Saito would (a) no longer belong to Tulārāma and (b) no longer be a *ceṭī* if she has assumed the status of *gaurīvavāṭikā*. The fact that she is now "with" Maṇinātha does not tell us very much about her present status, she could be a "paid" servant or she could have reverted to slavehood even after having been manumitted by the *gaurīvavāṭikāpattra*[25]. Since the *ceṭītva* of Saito has become the issue it is interesting to remember that in this reply in (2) Maṇinātha carefully avoids using any term to describe her present status. The implication here is that it is Tulārāma's job to prove that if Saito is his *ceṭī* that she has not been the subject of a *gaurīvavāṭikāpattra.* In other words, simply being the daughter of Tulārāma's slave is not conclusive.

---

[24] K. P. Jayaswal, "The Unexplained Passage" in the *Journal of the Bihar and Orissa Research Society*, volume VII, (1921), pages 123-124.

[25] *cf. Nāradasmṛti* 5.26-28 for the ways one might become a slave.

(6) Moreover, Tulārāma will not be allowed to describe Saito as his *cetī* simply by claiming she is the daughter of his slave. Maṇinātha has reduced the argument of Tulārāma to the absurd position of—"We might not be sure whether or not Saito is a slave, but we do know that she is the daughter of my slave Matī, so we know she is a slave." Maṇinātha further points out that in order for Tulārāma to get anywhere with this line of argumentation he must establish the paternity of Matī. Aside from the obvious difficulties of proving paternity, there is an explicit rule in classical Hindu law that the offspring of a female slave does not belong to the slave father (hence not to the slave father's owner, either) :

यथा गो ऽश्वोष्ट्रदासीषु महिष्याविकासु च ।
नोत्पादकः प्रजाभागी तथैवान्याङ्गनास्वपि । (Manusmṛti 9.48)

> As in the case of a cow, a mare, a she-camel, a female slave, a buffalo-cow, a she-goat, and a ewe where the stud is not the owner of the offspring—it is the same for the wives of others.

(7) This is apparently understood by the plaintiff, Tulārāma, who proceeds to claim that the *cetī*, Saito, is the daughter of his *cetī* Yādo. This change in the attack of Tulārāma and its necessity based on the reasons given above are examples of the brevity of the summary of the arguments as recorded in in a *jayapattra.* There are times when the details given in the *jayapattra* are not sufficient by themselves to depict a coherent argument, and it is necessary to supplement these details with the principles of the law on which the reasoning is based.

(8) We must assume that the respondent, Maṇinātha, does not see any flaws in Tulārāma's new argument since he asks that the *ceṭī* status of the mother be proved.[26] The fact that Yādo was not mentioned in the original plea in (1) shows that Tulārāma either had poor "legal advice" or that he knew that his proof for the *ceṭī* status of Yādo was weak and he may have hoped to avoid the question ; in any case, the matter is dropped and never raised again. The introduction of this new element does not place him in the position of entering a changed plea[27] since his hypothesis is still that Saito is his *ceṭī*.

(9) According to the rules of pleading described above in the notes to (1) this evidence should really have been mentioned in the original plea, and a delay granted to the plaintiff at this juncture is not the usual procedure (it is expressly prohibited at *Kātyāyanasmṛti* 134). There is a degree of latitude exercised by the judges in this case which indicates a reluctance to render a verdict on procedural grounds alone. This attitude is supported by a statement of *Bṛhaspatismṛti* 1.114—

केवलं शास्त्रमाश्रित्य न कर्तव्यो विनिर्णयः ।
युक्तिहीने विचारे तु धर्महानिः प्रजायते ॥

> A decision should not be rendered solely by relying on the texts, for *dharma* is assailed in an investigation which is devoid of reason.

(10) The era spoken of is the Fasli Era begun by Akbar at the beginning of his reign. This era is a source of confusion since it is a solar reckoning which is based on the lunar reckoning of the Hijra Era. Further confusion arises since Shah Jahān also established a Fasli Era which was current in the Deccan.[28]

---

[26] This statement of Maṇinātha's is unclear about whose *ceṭitva* is to be proved—Saito's or her mother's—, but judging from the statement of Tulārāma in (9), it must be Saito's *ceṭitva* which is to be proved.

[27] Changing one's plea at this point results in the loss of the suit, *cf. Bṛhaspatismṛti* 2.7.

[28] See A. Cunningham, *Book of Indian Eras*, reprint Indological Book House, Varanasi : 1970, page 82 ; and H. H. Wilson, *A Glossary of Judicial and Revenue Terms*. reprint Munshīram Manoharlal, New Delhi : 1968, page 158.

The years which are referred to in the text of the *jayapattra* are 1751 and 1794 A.D.

(11) The adjournment granted to the respondent, Maṇinātha, is well within the length of adjournments which are allowed in such situations—

सद्यः कृते सद्य एव मासातीते दिनं भवेत् ।
षडाब्दिके त्रिरात्रं स्यात्सप्ताहं द्वादशाब्दिके ।।
विंशत्यब्दे दशाहं तु मासार्धं वा लभेत् सः ।
मासं त्रिंशत्समातीते त्रिपक्षं परतो भवेत् ।। (Kātyāyana 154-155)

> When the transaction is recent (the reply must be made) at once, when it is a month old, a day may be granted (for filing the reply), when it is six years old, three days, when it is twelve years old seven days may be given, when twenty years old, he (the defendant) should get (a delay of) twenty days or half a month, when thirty years old a month, beyond that (i. e. when more than 30 years old) the time may be three fortnights. (Kane's translation)

The "force" which is mentioned is specifically excluded as a means of causing an individual to enter into slavery, as *Nāradasmṛti* 5.38 says—

चौरापहृतविक्रीता ये च दासीकृता बलात् ।
राज्ञा मोक्षयितव्यास्ते दासत्वं तेषु नेष्यते ।।

> Those who have been made slaves by force and carried off and sold by robbers should be freed by the king—slavery is not suitable for them.

It is surprising that Tulārāma would have even offered this argument in light of the clear prohibition of force in the texts. This is another instance of the apparently inferior quality of the understanding of the "law" or of the "legal advice" on which Tulārāma is basing his plaint. The position of Maṇinātha continues to be simply that Tulārāma must prove the fact that Saito is a *ceṭī*. If Saito had been a *ceṭī* when Tulārāma and his friends abducted her in 1715, then his position might be somewhat stronger since slaves captured in war are enumerated as one of the fifteen kinds of slaves, *cf.* *Nāradasmṛti* 5. 26-28. However, the fact of her abduction does not, in itself, make Saito a *ceṭī*.

(12) Again, an adjournment is allowed for the benefit of the plaintiff. The proposal to have a slave testify would ordinarily be forbidden (*Nāradasmṛti* 1.178), unless the case involves an act committed inside a house (अन्तर्वेश्मनि), in a forest (अरण्ये) or if the act involves loss of life (शरीरस्यापि चात्यये) according to *Manusmṛti* 8.69-70, or violence (साहसेषु), theft (स्तेयेषु), adultery (संग्रहणेष) and assault both physical and verbal (उभयपारुष्ययोः) according to *Nāradasmṛti* 1.189. In these cases (according to the interpretation of Kullūka and Govindarāja on *Manusmṛti* 8.69-70) if there is no qualified witness, then an otherwise incompetent witness such as a slave (दास) is allowed to testify as long as he has personal knowledge of the act (as long as he is an अनुभविन्). In this instance, the competence of the slave Vajahā to testify would at least be subject to challenge. This point will be raised below and Maṇinātha will find the slave's testimony inadmissible on other grounds as well. The "original" dispute here means the question of Saito's status as Tulārāma's *ceṭī*.

(13) At this point, Tulārāma is apparently in default. This is not certain, however. Most of the discussion in the texts on the subject of default are rules which pertain to the reply of the defendant. Kauṭilya's *Arthaśāstra* 3.1.27-28 says the following—

> अभिचोक्ता चेत्प्रत्युक्तस्तदहरेव न प्रतिब्रुयात परोक्तः स्यात् । २७
> कृतकार्यविनिश्चयो ह्यभियोक्ता नाभियुक्तः । २८

> If the plaintiff, to whom a reply has been given (by the defendant), does not counter-reply on the same day, he shall lose the suit. For, it is the plaintiff, who has decided (beforehand) what is to be done, not

the defendant. (R.P. Kangle's edition and translation, *The Kauṭilīya Arthaśāstra*, Bombay, 1972)

Tulārāma does not seem to be certain of the means that he will use for proving his plaint, and apparently is scrambling for evidence. As to whether the plaintiff, Tulārāma, is actually in default, it would depend on the judge's view of Tulārāma's challenges to his evidence. It appears that the judge has accepted Tulārāma's promise to produce his slave as a valid counter-reply, and the fact that Tulārāma is delinquent more than six weeks past the date that he set for his return is not enough to induce the judge to declare in favor of Maṇinātha. This is another indication of the apparent reluctance to decide the case on procedural grounds alone.[29]

(14) Maṇinātha makes three objections to the admission of testimony by Tulārāma's slave : 1.) He is a single witness ; 2.) He is a slave *and* he is owned by Tulārāma ; and 3.) he is less than half the age he would have to be in order to refute what will be Maṇinātha's final position in **17** that the title to Saito (or a member of her direct lineage) has been in the possession of his family for over 100 years. Objections 1.) and 3.) will be explained below. Objection 2.) is based on the list of incompetent witnesses given in *Nāradasmṛti* 1.177-192. The slave Vajahā is disqualified for two reasons—he is a slave (*Nāradasmṛti* 1.178) and he is one who has an interest in the outcome of the suit—(अर्थसम्बन्धिन्—*Nāradasmṛti* 1.177) since his owner is one of the parties in the suit.

(15) The judge makes his first evaluation of the evidence here by affirming the general rule prohibiting a single witness. It might be pointed out here that this rule does have some exceptions such as *Nāradasmṛti* 1. 192—

---

[29] In a report written for Mountstuart Elphinstone a few months before he became governor of Bombay in 1819, N. J. Lumsden, writing in barely understandable English, described the judicial practices under the Peshwas and states that default was duly noted in a proceeding, but that a trial was eventually carried out to a conclusion and a decision on the matter was pronounced. This report is quoted in Gune, *op. cit.*, pages 373-384.

> उभयानुमतो यः स्याद् द्वयोर्विवादमानयाः ।
> असाक्षिकोऽपि साक्षित्वे प्रष्टव्यः स्यात्स संसदि ॥

> By consent of both parties to the suit one man may be questioned as a witness in court even though he (would ordinarily) not be a competent witness.

In this case, of course, Maṇinātha has not given his consent.

(16) The "ordinary proof" (लौकिकप्रमाण) of which Tulārāma has none, consists of documents, witnesses, and possession. The "extraordinary proof" to which he would resort consists of oaths and ordeals such as the ordeal of fire, water, etc. He is correct to offer this as proof when he has no ordinary proof, *Yājñavalkyasmṛti* 2.22—

> प्रमाणं लिखितं भुक्तिः साक्षिणश्चेति कीर्तितम् ।
> एषामन्यतमाभावे दिव्यान्यतममुच्यते ॥

> Proof is said to be a document, possession, and witnesses.
> In the absence of any of these, any ordeal is prescribed.

However, Tulārāma is apparently quite desperate at this point, because by resorting to an ordeal he comes close to admitting defeat because Maṇinātha will rely on possession to prove his right to ownership and this will lead to Tulārāma's defeat according to *Kātyāyanasmṛti* 218-219—

> यद्येको मानुषीं ब्रूयादन्यो ब्रूयात्तु दैविकीम् ।
> मानुषीं तत्र गृह्णीयान्न तु दैवीं क्रियां नृपः ॥
> यद्येकदेशव्याप्तापि क्रिया विद्यते मानुषीं ।
> सा ग्राह्या न तु पूर्णापि दैविकीं वदतां नृणाम् ।

> If one man should rely on human evidence and the other on divine evidence, then the king should accept the human evidence and not a trial by divine evidence. Even if the human evidence covers only one part of the dispute it should be accepted, and not the divine evidence of the other man even though it covers the entire dispute.

The Paṇḍita was an officer of the court, and his qualifications were mentioned in the *Śukranīti* 2.85 where he is described as धर्मतत्त्ववित्, "knowing the principles of dharma". One of the principles in which he would have had to be expert was the administration of ordeals. The administration of an ordeal by an expert was a rule given by *Bṛhaspatismṛti* 8.15—

> यथोक्तविधिना देयं दिव्यं दिव्यविशारदैः

> An ordeal should be given by experts in ordeals according to the prescribed rule.

(17) Neither Tulārāma nor Maṇinātha have a title which proves their ownership of Saito. Tulārāma has been unable to adduce any "ordinary" or human evidence to support his claim to ownership. In order to avoid the possibility of an ordeal, Maṇinātha only needs to offer any human evidence, and he offers the strongest possible evidence—possession for an appropriately long period of time.

Possession alone is not an admissible proof. It must be accompanied by a title or it must be for a specified period of time if there is no title. This period of time (दीर्घकाल *Vyāsasmṛti* 84) is measured in two ways : in a period of years and in a number of generations. Basically, what is sought is possession for a period of time extending beyond a man's memory (स्मार्तकाल). The *Mitākṣarā* on *Yājñavalkya* 2.27 says that this term means a period of 100 years—स्मार्तश्च कालो वर्षशतपर्यन्तः. The number of generations through which possession must pass to be admissible as evidence was three, as *Bṛhaspatismṛti* 7.56 says—

> स्थावरेषु विवादेषु भुक्तिस्त्रिपुरुषी च या ।
> स्वतन्त्रैव हि सा ज्ञेया प्रमाणं साध्यनिर्णये ॥

> In disputes over immovables, independent possession for three generations should be admitted as evidence for deciding what is to be proved.

The length of time which a generation represents is not unanimously agreed upon by the writers on this subject. Bṛhaspati in *Parāśara-Mādhava* volume III page 104[30] says that a single generation should be understood as thirty years so the period of time for possession without title would be ninety years. Vyāsa in *Smṛticandrikā* III page 172[31] and *Kātyāyanasmṛti* 318 both hold that twenty is one generation so that sixty years is adequate for possession. An anonymous writer quoted in *Parāśara-Mādhava* volume III page 104 says one generation is thirty-five years, so possession extending over 105 years would be necessary. *Yājñavalkyasmṛti* 2.24, literally understood, indicates that possession for only twenty years is adequate to establish ownership even without title. This question has given rise to much discussion among *nibandhakāras* which need not detain us here, but what is to be noted is that Maṇinātha specifies that there has been possession in his family for more than 100 years. His enumeration of the *four* generations of ownership also reflects his adherence to the dictates of *dharmaśāstra* since possession for three generations means that possession has passed to the fourth generation as Jimutavāhana makes clear in the *Vyavahāramātṛkā* page 341[32]—

> एकेन तावद् भुक्तं तस्मिन्मृते तत्पुत्रेण तयोश्च मृतयोस्तृतीयेन
> तस्मिन्मृते चतुर्थस्य त्रिपौरुषिको भोगो भवति ।
>
> Something is possessed by an individual ; when he dies by his son ; when they are both dead, by the third generation ; when he dies, the fourth generation has possession for three generations.

In order for such possession to be valid it must be carried on openly and without challenge during the whole period (*cf.* Yājñavalkyasmṛti 2.24—पश्यतो ऽब्रुवतो, for example). This is why Maṇinātha mentions the fact that the possession was

---

[30] Edited by MM. Chandrakānta Tarkalaṁkāra, Bibliotheca Indica Work No. 298, Asiatic Society, Calcutta : 1899.

[31] Edited by L. Srinivasacharya, Bibliotheca Sanskrita No. 45, Mysore : 1914.

[32] Edited by Asutosh Mookerjee, in the *Memoirs of the Asiatic Society of Bengal* (1912) volume III, number 5, pages 277-353.

"obvious" (जागरूके) and that the plaintiff was silent the whole time.

The possession for more than 100 years cannot, of course, mean possession only of the *ceṭī* Saito. What is meant here is that Saito's forbears and her offspring have been in the possession of Maṇinātha's family for over 100 years.

(18) This is the beginning of the decision. The judges have accepted the argument of Maṇinātha in **17**.

(19) The verse which is referred to here is *Nāradasmṛti* 1.87—

> अनागमं तु यो भुंक्ते बहून्यब्दशतान्यपि ।
> चौरदण्डेन तं पापं दण्डयेत्पृथिवीपतिः ॥

He who enjoys (anything) without title even for several centuries—the king should punish that sinner like a thief.

(20) "possession as has been prescribed", *i.e*, for more than 100 years and three generations.

(21) The passage referred to is the second half of *Nāradasmṛti* 1.87 given above.

(22) This refers to the two part subdivision of possession as a category of proof—possession with a valid title, and possession by prescription ; for example *Kātyāyanasmṛti* 317—

> भुक्तिस्तु द्विविधा प्रोक्ता सागमनागमा तथा ।
> त्रिपुरुषी या स्वतन्त्रा सा चेदल्पा तु सागमा ॥

Possession is declared to be of two sorts : viz. with title and without title. Possession which continues for three generations is independent (means of proof of ownership without actual proof of title), but if it is less (than for three generations), then it (is proof of ownership) if accompanied with title. (Kane's translation)

(23) The judge's statement that there are "no ordinary means of proof" (लौकिकप्रमाणाभावे) might be slightly misleading since there *is* a mode of "ordinary proof" in the form of ownership by prescription via possession for the required length of time. What he means is that Maṇinātha does not have possession with a valid title (सागमभुक्ति). The confusion which has arisen over the way in which ownership is acquired by prescription (possession for ten, twenty, sixty, 100, or 105 years as discussed above in (**17**) has created problems of interpretation for commentators and *nibandhakāras*, and there is no unanimity about the precise requirements for ownership arising from possession over time.[33] What the judge is saying here is that he accepts Maṇinātha's circumstance as an "ordinary" means of proof, and that this acceptance, in light of the Pitāmaha verse cited here, prevents Tulārāma from undergoing an ordeal to prove his claim.[34]

The comments of Misaru Miśra on this Pitāmaha verse are in agreement with the position taken by the court—

भुक्त्युत्कर्षगामित्वे स्थावरे दिव्यं नायाति । ...यत्र कारणवशात् (sic) लिखितं नष्टं साक्षिगोऽपि नष्टाः भोगस्तु यथोक्तकालादपकृष्टस्तत्र संशयानापायात् (sic) दिव्यमायात्येव निर्णयस्यावश्यकत्वात् ।

> In a dispute over immoveables wherein there is reliance on the superiority of possession, an ordeal is not resorted to. Where a document and also witnesses are corrupted on account of some motive, and possession is eliminated because of the rules for prescription, there an ordeal *is* resorted to because the doubts (otherwise) are not resolved and because of the necessity for a decision.[35]

---

[33] See Vācaspati Miśra's struggle for consistency in the debate recorded in *Vyavahāracintāmaṇi* 451.2-503.1. Medbātithi, for example, on *Manusmṛti* 8.148 (edited by V. N. Mandlik, Bombay : 1886, page 963) refers to the "theorists" of possession for three generations (त्रिपुरुषभुक्तिवादिनः). This dispute has even continued to be puzzled over in modern times, *cf. Lalubhai v. Bai Amrit* in *Indian Law Reports*, 2, Bombay, 299 at page 304ff.

[34] There is no doubt that the judge in this case has followed the consensus with regard to the admissibility of evidence but Raghunandana Bhaṭṭācārya has expressed a different opinion in his *Divyatattva* (edited by R. W. LARIVIERE, New Delhi : 1981 ; page 169 where he does allow an ordeal even when there is a witness.

[35] The text is from the *Viṿādacandra* edited by Priyanath Mitra, Calcutta : 1931, page 111.

(24) This is the decision (निर्णय).

(25) The signature of the judge is contained here as prescribed in the verses of *Vṛddhavasiṣṭhasmṛti* given above.

The *Paṇḍita* and the *Dharmādhyakṣa* were officers of the court (perhaps those who signed the document ?). The exact duties of these officers are not known.[36]

POSTSCRIPT

While this article was in press, I discovered that Prof. D. C. Sircar has very likely solved the problem of the elusive term *gaurīvavāṭikā*. He suggests (*Studies in Indian Coins*, Delhi : 1968, pages 284-288) that the word should be read *gaurīvarāṭikā* "virgin cowry" i.e. "virgin money" or a sort of bride price. This is the most likely suggestion for the meaning of this obscure term.

---

[36] See P. V. Kane, *History of Dharmaśāstra*, volume III, Poona : 1973, Page 126.

PATRICK OLIVELLE, INDIANA UNIVERSITY

RENOUNCER AND RENUNCIATION IN THE *DHARMAŚĀSTRAS*[1]

The renouncer[2] is depicted in Brāhmaṇical literature as having reached a condition that transcends normal human existence. He is freed from all the duties and obligations, rules and regulations, customs and taboos that dog ordinary mortals. His freedom foreshadows on earth the transcendent freedom *(mokṣa)* from the birth-death cycle (*saṃsāra*), which is the ulti-

---

ABBREVIATIONS

Ap=Āpastamba (dharmasūtra) ; *Artha*=Kauṭilya : Arthaśāstra. Ed. R.P. Kangle. Bombay 1960 ; *Bau*=Baudhāyana (dharmasūtra) ; *Br*=Bṛhaspati (smṛti) ; Ed. J. Jolly ; *Gau*=Gautama (dharmasūtra) ; *K*=Kātyāyana (smṛti). Ed. P. V. Kane ; *M*=Manu (smṛti) ; *N*=Nārada (smṛti) ; *Vai*=Vaikhānasadharmasūtra ; *Vas*=Vasiṣṭha (dharmasūtra) ; *Vi* Viṣṇu (smṛti) ; *Yāj* Yājñavalkya (smṛti).

1. The term *'dharmaśāstra'* is meant to include the *dharmasūtras* of Gautama, Baudhāyana, Āpastamba, Vasiṣṭha, Viṣṇu and Vikhanas, as well as the metrical *dharmaśāstras*, also known as *smṛtis*, of Manu and Yājñavalkya. Especially in the fourth part of this study I have used also the *smṛtis* of Nārada and Parāśara and the fragments of Kātyāyana collected by Kane and of Bṛhaspati collected by Jolly. In that section I have made extensive use of Kauṭilya's *Arthaśāstra.* Although not a dharmaśāstric work, its use can be justified on the ground that its sections on law *(Vyavahāra)* and the duties of a king parallel and complement the corresponding sections of the *dharmaśāstras.* We have followed the relative chronology of the texts established by P. V. Kane in the first volume of his *History of Dharmaśāstra* (Poona 1930). Our study of the *āśrama* theory tends to corroborate that chronology.

2. The *dharmaśāstras* use several terms for a renouncer : *bhikṣu* (or *bhikṣuka*)=mendicant [Gau 3.2,11 ; Bau 2.17.16,17 ; Vas 8.16 ; 21.33 ; M 3.94,243 ; 8.360 ; Yāj 1.108 ; 3.59,62 ; Vi 5.132 ; 59.14.16,18,27 ; 81.18 ; 96.5 ; Vai 1.1,4,9 ; 2.5 ; 3.5,6,9]. *pravrajita*=one gone forth (from home into homelessness) [Gau 12.38 ; 14.44 ; 18.16 ; Bau 1.19.13 ; Āp 1.18.31 ; Vas 19.23,37 ; M 8.363,407 ; Yāj 2.235,293 ; Vi 5.115 ; 8.2 ; 36.7 ; N 1.158, 179 ; 12.74,97 ; K 115]. *parivrājaka*=wanderer [Bau 2.11.12,16 ; Vas 7.2 ; 10.1]. *muni*=sage [Bau 2.13.7 ; 2.17.30 ; 2.18.13,22 ; Āp 2.9.13 ; 2.21.10 ; Vas 6.20 ; 10.2 ; M 6.41,43]. *yati*=striver [Bau 3.3.5,6,7 ; 4.5.19 ; Vas 6.19 ; 11.17 ; M 5.20,137 ; 6.55,56,58, 69,86,87 ; 11.219 ; 12.48 ; Yāj 2.137 ; 3.60 ; Vi 47.7 ; 59.27 ; 60.26 ; Vai 2.8] *saṃnyāsin*=abandoner [Bau 2.18.24 ;

mate aspiration in all Indian religions. It is not surprising, therefore, that renunciation is often termed *mokṣa*.[3] The Vai [1.9], moreover, asserts that for a renouncer "there exists neither *dharma* nor *adharma*, neither truth nor falsehood, neither purity nor impurity, nor any such duality."[4] The *Chāndogya Upaniṣad* [2.23.1] speaks of three divisions of *dharma* (*dharmaskandhāḥ*) which correspond to the first three orders of life (*āśrama*), viz. perpetual student, householder and forest hermit. It then mentions "the person established in Brahman" (*brahmasaṃstha*), who attains immortality, while those who follow the three divisions of *dharma* attain only one of the heavenly abodes.[5]

3.2.17 ; Vai 3.8 (twice)]. *vedasaṃnyāsika*, *vedasaṃnyāsin* [M 6.86 ; Bau 2.18.24]. On the latter term and on *saṃnyāsa* and *saṃ-ny-√ as* see below Part III, and any article, "Contributions to the Semantic History of *Samnyāsa*" in *JAOS* 101.3 (1981) pp. 265-274. Renunciation, namely the state of being a renouncer, is referred to as: *parivrāja*=wandering [Āp 2.21.7]. *pravrajyā*=going forth [Yāj 2.182 ; Vi 5.153 ; 96.1 ; N 5.27.35 ; K 486, 679,721,731]. *mauna*=silent sagehood [Āp 2.21.1]. *saṃ-ny-√as*= abandonment [Bau 2.17.1,3 ; M 1.114 ; 5.103 ; 6.96 ; Yāj 3.32 ; Vi 22.91 ; Vai 2.6 (twice)]. The act of renouncing is expressed by several verbs : *pra-√vraj*=to go forth [Bau 2.11.16 ; 2.17.2 ; Āp 2.21.8 ; M 6.34,38,39 ; Vi 6.27 ; N 13.25]. *pari-√ vraj*=to wander [M 6.33,41,85 ; Yāj 3.58]. *pra-√sthā*=to depart [Vas 10.1]. *saṃ-nyṃ√ as*= to abandon [Bau 2.17.27 ; Vas 10.4 ; M 6.94,95,96 ; Vai 2.7]. In the above list I have included the terms used for both male and female renouncers. The latter is referred to only rarely in the dharmaśāstras. The only term used is *pravrajitā* [M 8.363 ; Yāj 2.293 ; Vi 36.7 ; N 12.74]. although in later literature the feminine forms of several words are used : *bhikṣukī*, *bhikṣuṇī*, *parivrājakā*, *saṃnyāsinī* The term *śramaṇa* [Pāli *samaṇa*], one of the most common terms for a renouncer in Buddhist literature, is conspicuous by its absence in the dharmaśāstras. The term *śrāmaṇaka* (often in the corrupt form *śrāvaṇaka*) is used to refer to a treatise dealing with forest hermits, especially with reference to the procedure for kindling the special fire of hermits, hence called '*śrāmaṇaka* fire' [Gau 3.26 ; Bau 2.11.15 ; Vas 9.10 ; Vai 1.6,7 ; 2.1-5].

[3] Cf. M 1.114 ; 6.35-37 ; Yāj 3.57.

[4] *na teṣāṃ dharmādharmau satyānṛte śuddhyaśuddhyādi dvaitam.* Vai 1.9

[5] *trayo dharmaskandhā yajño 'dhyayanaṃ dānam iti prathamas tapa eva dvitīyo brahmacāry ācāryakulavāsī tṛtīyo 'tyantam ātmānam ācāryakule*

According to the traditional interpretation,[6] *brahmasaṃstha* is a renouncer, who is thus placed outside the pale of *dharma*.

One definition of *dharma* states that it consists essentially of commands.[7] A command refers to what has to be done (*kartavya*) and demands activity (*karman*). *Dharma*, therefore, pertains to the sphere of action (*pravṛtti*). A renouncer, on the other hand, abandons all actions ; he is said to be beyond the scope of positive injunctions. His condition is one of non-action (*nivṛtti*).[8] We should assume, therefore, that his mode of life is beyond the realm of *dharma*.

Consequently, in theory at least we should expect renunciation to fall outside the scope of the *dharmaśāstras*. Yet all writers on *dharma*, including the earliest whose work is extant, namely Gau, devote some space to its discussion. This paper attempts to study the process whereby renunciation became incorporated into the framework of the *dharmaśāstras* and to examine the information on the early history of renunciation contained in them.

One may, however, contend that I am engaged in a circular argument. In explaining how renunciation came to be incorporated I presuppose that renunciation was at first outside the scope of a *dharmaśāstra* and therefore needed to be incorporated. Because I have actually been confronted with this objection by at least two scholars, I feel obliged to answer it. Only the most uncritical believer in an immutable *sanātana dharma* will fail to observe that the two earliest dharmasūtras, viz. Gau and Bau, do not accord a place to renunciation within their respective structures. Renunciation is mentioned at all only in describing the *āśramas*, a theory they ascribe to 'some' and with which they strongly disagree. Baudhāyana especially inveighs against the proponents of the theory, in effect calling it the work of a devil [Bau 2.11.28]. This indicates that at least these

---

'va ādayan sarva ete puṇyalokā bhavanti brahmasaṃstho 'mṛtatvam eti. Chāndogya Upaniṣad 2.23.1.

[6] Cf. P. V. Kane, *History of Dharmaśāstra*, ed. cit., II, pp. 420-21.

[7] *codanālakṣaṇo 'rtho dharmaḥ. Pūrva-mīmāṃsā-sūtra*, 1.1.2.

[8] See my article, "A Definition of World Renunciation," *Wiener Zeitschrift für die Kunde Südasiens*, XIX (1975), pp. 75-83.

two authors did not view renunciation as falling within the range of topics to be dealt with in their respective treatises. When, on the other hand, we look at the *dharmasūtras* of Āp and Vas, which represent the next stage of the dharmaśāstric literary history, we find that the *āśrama* theory has become an integral part of these treatises. Renunciation is integrated into the dharmaśāstric scheme and it is the theoretical advance made with the invention of the *āśrama* theory that made it possible. My argument, therefore, is not circular, and I hope that this will be demonstrated by the following textual analysis of the *dharmaśāstras*.

I

DHARMA, ĀŚRAMA AND RENUNCIATION

The śāstric writers besides including renunciation among the topics discussed attempt to structurally integrate it into the dharmaśāstric framework. This integration was made possible by the theoretical advance in the understanding of the concept of *dharma* that resulted from the invention of the *āśrama* theory. It is only within the context of the acceptance of this theory by the dharmaśāstric tradition and its further evolution within that tradition that we can study the incorporation of renunciation into the śāstric framework.

We can identify three major stages in this process. The first is represented by Gau and Bau, and the second by Āp and Vas. The third stage is encountered in the metrical *smṛtis* of Manu and Yāj, as well as in Vi and Vai. These stages parallel the changing attitude within the *dharma* tradition toward the *āśrama* theory, from grudging acceptance to structural integration.

Gau in the first part [chapters 1-9] of his work follows the scheme of the sacramentary rites (*saṃskāra*), principally initiation (*upanayana*) and marriage. At the outset he deals with Vedic initiation [1.5-27] and the duties of a Vedic student

[1.28—2.47]. He ends the second chapter with a description of the rites that conclude the period of studentship. A young man who returns home after a long period of residence at his teacher's (he is technically called a *snātaka*) is expected to marry and raise a family. Following that scheme, Gau deals with the selection of a bride, marriage and the duties of a householder in chapters 4-9. However, the sections on studentship [ch. 1-2] and married life [ch. 4-9] are divided by a digression on the *āśramas* [ch 3]. Gau opens by saying that some permit a student who has completed his Vedic studies to choose one of the four *āśramas* [*tasyāśramavikalpam eke bruvate* : 3.1]. He may choose to remain a student for ever or to become a householder, a forest hermit or a renouncer.

It may be useful here to state briefly the theory of *āśramas* as understood by Gau as well as by Bau, Āp and Vas.[9]

(a) *Āśramas* are permanent states of life ; (b) Therefore, it is not permissible to leave one *āśrama* and enter another or to pass successively through all of them ; (c) An *āśrama* is selected by the student who has completed his Vedic study following initiation. It follows that the first *āśrama*, viz. studentship (*brahmacarya*), is *not* this temporary studentship after initiation, but perpetual studentship selected after the completion of the temporary studentship. The latter is not viewed as an *āśrama* in the *dharmasūtras* ; it is only a precondition for entry into any *āśrama*. This point bears repetition, for the *dharmasūtras'* view of the *āśramas* can be, and unfortunately has been, greatly misunderstood if, following the practice of the later *dharmaśāstras*, we identify the first *āśrama* with this temporary studentship.

The *āśramas*, then, were viewed by some proponents of the theory as alternative and parallel walks of life. None is obligatory, not even that of the householder. The only obligation is to choose one of them. This view is obviously not shared by Gau. He refutes it at the end of ch. 3 : there is only one *āśrama*, because that of the householder is expressly enjoined [*aikāśramyaṃ tv ācāryāḥ pratyakṣavidhānād gārhasthyasya* : 3.36]. Family life cannot be just one among many paths to be freely chosen, because it is enjoined by the Veda and therefore obligatory on all.

---

[9] For a more detailed discussion of the *āśrama* theory in Gau, Bau, Āp and Vas, see my article, "The Notion of Āśrama in the Dharmasūtras," *Wiener Zeitschrift für die Kunde Südasiens*, XVIII (1974), pp. 27-35.

It is, however, unclear at this point whether Gau is maintaining that theoretically there can be only one *āśrama*, namely that of the householder, or merely asserting that a student after completing his studies should only enter the householder's *āśrama*.[10] If there is a syntactical connection between the word *tasya* (for him), which opens the chapter, and *sūtra* 36, which brings it to a close—and I believe that there is—then the second alternative is plausible. *Sūtra* 36 would then mean : "For him who has completed Vedic studies only one *āśrama* is open, because the householder's *āśrama* is expressly enjoined on him."

This interpretation is supported by the fact that Gau refers to the *āśramas* in the plural at four other places, which would be inexplicable if he accepted the legitimacy of only the householder's *āśrama*. At 11.9 he admonishes the king to protect the social classes (*varṇa*) and *āśramas*. At 11.29 he speaks of the happy births awaiting people of all *varṇas* and *āśramas* who follow the path of duty. He opens the section on penance by stating that he has completed the discussion of the *dharmas* of *varṇas* and *āśramas* [19.1]. At 28.49 Gau gives the composition of a ten-member legal assembly (*pariṣad*). Three of these members should belong to the first three *āśramas*. All this shows that Gau recognized the existence of the four *āśramas*, even though he did not approve of them.

---

[10] Given the permanence of the *āśramas*, the choice of one would preclude entry into any other. Thus, one may theoretically argue, by making the householder's *āśrama* obligatory Gau has made all others redundant. Gau, however, appears not to have drawn this logical conclusion. Gau does not give any hint as to how people could enter various *āśramas* if it is not permissible to do so immediately after completing Vedic studies.

The only explicit discussion of the *āśramas*, however, is within the context of explaining an opponent's view which he rejects. It is within this context, moreover, that he discusses renunciation. Gau failed to integrate the *āśrama* theory into the structure of his treatise. Renunciation perforce remained outside the scope of his work.

The study of Bau is complicated by the fact that the work going under his name consists of at least two layers. Scholars are in agreement that the third and fourth books (*praśnas*) of Bau are a later addition.[11] I believe[12] that the section 2.17-18, which concludes the second book and deals with the rite of renunciation and the duties of a renouncer, also forms part of this later addition.

The view of the *āśramas* presented therein and the discussion of the proper time for renunciation could not have been written by the same person who wrote the section on *āśramas* at 2.11. Five opinions are given at Bau 2.17.1-6 on the vexing question : who is entitled to renounce ? Some of them permit even householders and forest hermits to renounce, indicating that the *āśramas* are no longer viewed as permanent states. This is confirmed by Bau 2.17.15-16, which twice repeats the expression "having proceeded from *āśrama* to *āśrama*" (*āśramād āśramaṃ gatvā* , reminiscent of Manu 6.34. The view of *āśramas* at Bau 2.11, on the other hand, agrees with that presented by Gau. Moreover, in Bau 2.17-18 renunciation is referred to regularly as *saṃnyāsa*, a word that is not found elsewhere in the *sūtra* literature and becomes common only at a very late date [cf. Part III below]. This section demonstrates a clear sympathy towards renunciation, in contrast to the hostility shown in the earlier section. Specifically, at Bau 2.11.30 two verses from the *Taittirīya Brāhmaṇa* [3.12.9.7] are cited ; these are used by some, according to Bau, to prove the superiority of renunciation. In the very next *sūtra* Bau cites two other verses from the same *Brāhmaṇa* to demonstrate the opposite. At 2.17.7, however, the same two verses in praise of renunciation are no longer given as an opponent's view but as his own. Further, at 2.17.2 Bau states : "Some say : 'He who has finished his studentship may renounce immediately on the completion of that' " *(so 'ta eva brahmacaryavān pravrajatīty ekeṣām)*. This opinion is given verbatim by Āp [2.21.8, 19 : *ata eva brahmacaryavān pravrajati*] and is shared by the authors of all four *dharmasūtras*, including Bau at 2.11. We must conclude, therefore, that Bau 2.17-18 was written by an author different from the one who wrote Bau 2.11.

---

[11] Cf. G. Bühler, *The Sacred Laws of the Aryas* (SBE, Vol. XIV ; Oxford 1882) II, pp xxxiii-xxxv. P. V. Kane, op. cit. I, p. 23.

[12] See my article, "The Notion of Āśrama in the Dharmasūtras," ed. cit., pp. 29-30.

For the sake of convenience I shall call the third and fourth books together with 2.17-18 *Deutero-Baudhāyana* (Deutero-Bau) and the first book together with chapters 1-16 of the second book *Proto-Baudhāyana* (Proto-Bau).[13]

Proto-Bau presents basically the same view of the *āśramas* as Gau. Often there is a near verbatim agreement between the two [Gau 3.26-35=Bau 2.11.15 ; Gau 3.36=Bau 2.11.27]. One gets the impression that the former had Gau's work before him when he composed his treatise. There are, however, interesting and significant differences in Proto-Bau's discussion. The first is in the context. Unlike Gau, he deals with the *āśrama* theory within his discussion of the householder's duties. He refers to the opinion of 'some' *(eke)* according to which the following

---

13. The term Deutero-Baudhāyana is used merely to distinguish the older unitary section of the dharmasūtra, i.e. Proto-Baudhāyana, from the later additions. It is not intended to suggest that these additions form a unitary whole or that they belong to a single author. The evidence of the sections on the renouncer [Bau 2.17-18], the holy householders, such as Śālīnas and Yāyāvaras [Bau 3.1-2] and the hermit [Bau 3.3] suggests that at least these sections belong to a period after the composition of the metrical *smṛtis*. Some of this evidence will be considered in the following two sections of this paper. They cannot be far separated in time from the Vai and can be assigned tentatively to about the fifth century A. D.

verse establishes a fourfold division of *dharma* (*dharmasya caturdhā bhedam* : Bau 2.11.9-11) :

> Four paths, leading to the world of the gods, go severally from earth to heaven. All ye gods, place us on that one among them which will gain us undecaying prosperity. [*Taittirīya Saṃhitā*, 5.7.2.3]

This fourfold division of *dharma* consists of the four *āśramas*. Here we find the first evidence that the proponents of the *āśrama* theory intended thereby to make a theoretical advance in the understanding of *dharma*. We are reminded of the three *dharmaskandhas* of the *Chāndogya Upaniṣad* [2.23.1] referred to above. One can thus trace a link between that early attempt to classify *dharma* in terms of distinct life-styles and the later and more advanced theory of *āśramas*. The most significant difference between the two is that in the threefold *Chāndogya* classification renunciation is left out and regarded as outside *dharma*, whereas in the fourfold *āśrama* classification it is considered an integral part of *dharma*. In so far as it facilitated the incorporation of renunciation into the *dharmaśāstras*, the latter classification must be considered a remarkable advance over the *Chāndogya*. One cannot fail to notice the parallel between the fourfold division of *dharma* in terms of the *āśramas* and its more ancient division in terms of the four *varṇas*. This parallelism, already hinted at by Gau [19.1], will be highlighted in the next stage of the evolution represented by Āp and Vas.

Proto-Bau concludes this section on the *āśramas* by saying : "But the venerable teacher declares that there is one *āśrama* only, because the others do not beget offspring" (*aikāśramyaṃ tv ācāryā aprajananatvād itareṣām* : Bau 2.11.27). This statement is identical to that of Gau [3.36], except that the reason for the rejection of the four-*āśrama* theory is different. Proto-Bau accepts only the householder's *āśrama* because the others do not beget offspring. This reason is given by Gau [3.3] for his claim that the householder is the source of all others.

Proto-Bau probably made this change deliberately. His objection to the *āśrama* theory is more fundamental than Gau who says that the choice of the student is restricted to the *āśrama* of the householder. He rejects the very division of *dharma* in terms of the *āśramas*. Thus at 2.11 28 he claims that this fourfold division of *dharma* was made by a demon named Kapila, who was contending with the gods. Hence, no one should pay any heed to it. Consequently, the expression *aikāśramyam* (only one *āśrama*) has different meanings in Gau and in Bau. In Gau it means that the student who has completed his studies is obliged to become a householder, while in Proto-Bau it means that there simply is one *āśrama*, that of the householder. Nevertheless, the effect in both cases is the same : renunciation remains outside the scope of the respective *dharmasūtras*.

Unlike Gau, Proto-Bau engages in a detailed refutation of the *āśrama* theorists. First, he gives what he believes to be the true interpretation of the verse [Tait. Saṃ. 5.7.2.3] used by them as the scriptural basis for the *āśrama* theory. The four paths, he asserts, refer not to the four *āśramas* but to the four types of sacrifices : *iṣṭis*, animal sacrifices, *soma* sacrifices and *darvīhomas*. However, the most important contribution of Proto-Bau to the *āśrama* debate is his use of the scriptural passages on the three debts of man as an argument against the legitimacy of the four *āśramas*. He cites two such passages :

> May I obtain, O Agni, immortality through offspring [Rv 5.4.10]. A Brahmin, at his very birth, is born with a triple debt—of studentship to the seers, of sacrifice to the gods, of offspring to the manes. [Tait Saṃ. 6.3.10.5 ; Bau 2.11.33]

To my knowledge Proto-Bau is the first to apply the triple-debt theory to the debate on the *āśramas*. He uses it to refute the classification of *dharma* in terms of the *āśramas*. According to him, the existence of these three debts precludes the possibility of entering any *āśrama* other than that of the householder, because choosing any other would make their payment impossible. Of the three debts, the first, i.e. studentship, is paid immediately after initiation and before the choice of an *āśrama* is made. Thus it is not a point at issue. The other two—procreation and sacrifice—can be paid only by a householder.

In this light we can appreciate better why Proto-Bau used the non-procreation of children in other *āśramas* as the reason for there being only one *āśrama* [Bau 2.11.27]. We can also understand why Kapila is said to have been contending (*spardhamānaḥ*) with the gods when he invented the *āśrama* theory. People who choose an *āśrama* other than the householder's do not offer sacrifice to the gods. Thus, on the one hand, they do not pay their debt to the gods, and, on the other, they deprive the gods of sacrificial viands.

One point which Proto-Bau's argument against the *āśrama* theory proves is that the proponents of that theory were sympathetic towards the ideals of celibacy and non-performance of rites and viewed family life as not conducive to the attainment of man's highest goal.[14] As this goal is often termed immortality, it is instructive that Proto-Bau cites the Vedic text that declares man's immortality to lie in his offspring [Bau 2.11.33]. In a different context he devotes an entire chapter [2.16] to demonstrating that a man has to pay his three debts and that his best hope of heaven and immortality lies in begetting a son :[15]

> If he worships the sages through the study of the Veda, Indra with *soma* sacrifices, and the manes of his ancestors through the procreation of children, he will rejoice in heaven, free from debt. [Bau 2.16.5]

---

[14] This is in line with the oft repeated Buddhist formula : "Full of hindrances is the household life, a path for the dust of passion Free as the air is the life of him who has renounced all worldly things. How difficult is it for the man who dwells at home to live the Holy Life in all its fullness, in all its purity, in all its bright perfection." *Dīgha Nikāya (Sāmaññaphala Sutta)*, ii.41.

[15] A similar sentiment is expressed in the *Aitareya Brā'maṇa*, 33.1 : "For what purpose dirt ? Why the skin and beard ? What purpose is there in self-torture ? Desire a son, O Brahmin ! He is the world highly praised." *kiṃ nu malaṃ kim ajinaṃ kim u śmaśrūṇi kiṃ tapaḥ | putraṃ brahmāṇa icchadhvaṃ sa vai loko 'vadāvadaḥ ‖*

> Through a son he conquers the world, through a grandson he obtains immortality, but through his son's grandson he ascends to the (highest) heaven. [Bau 2.16.6]

Neither Gau nor Proto-Bau fully understood or appreciated the ideal and values of the new liberation philosophies enshrined in the *āśrama* theory. The subtlety of the emerging concept of immortality was lost on them. Challenged, they retreated to the familiar ground of Vedic law.

The new values came to be understood more fully by Āp and Vas, who represent the second stage in the process whereby renunciation was incorporated into the framework of the *dharmaśāstras*. In contrast to the first stage, here we find an acceptance of the *āśrama* theory coupled with an attempt to use the *āśrama* framework as a basis for organizing the dharmaśāstric material. The *āśrama* theory, however, remains the same as that presented in Gau and Proto-Bau.

We have already noted that the *āśramas* were conceived as a fourfold division of *dharma*. Once this was accepted, it would have been only natural to see a parallel between it and the other division of *dharma* in terms of the four *varṇas*. This parallelism is already hinted at in Gau 19.1 : *ukto varṇadharmaś-cāśramadharmaś ca.* Both Āp and Vas put it into relief by the very words used to enumerate the *varṇas* and *āśramas* :[16]

Āp 1.1.4 : *catvāro varṇā brāhmaṇakṣatriyavaiśyaśūdrāḥ.*
Āp 2.21.1 : *catvāra āśramā gārhasthyam ācāryakulaṃ maunaṃ vānaprasthyam iti.*

The parallelism is even more striking in Vas, where the names of *āśramas* also are compounded :

Vas 2.1 : *catvāro varṇā brāhmaṇakṣatriyavaiśyaśūdrāḥ.*
Vas 7.1-2 : *catvāra āśramā brahmacārigṛhasthavānaprasthaparivrājakāḥ.*

In these authors, therefore, we find the birth of the view that the entire *dharma* can be encapsulated in the *dharma* of *varṇas* and *āśramas* (*varṇāśramadharma*).

---

[16] Gau does not list the *varṇas* at all. Proto-Bau does so at 1.16.1, but its wording does not parallel the enumeration of *āśramas* at 2.11.12.

Āp deals with the four *āśramas* [2.21-24] at the end of his discussion [1.1-2.20] on right conduct (*ācāra*) and penance (*prāyaścitta*) and just before the section on the king and legal procedure (*vyavahāra* : 2.25-29). Āp probably intended to deal with this problem separately and outside the general framework of his work. Although he accepts the *āśrama* theory, he is unable or unwilling to make it a basis for organizing his material. The first section of his work [1.1-2.20] dealing with right conduct and penances is organized around the sacramentary rites, just as in Gau. Consequently, as in Gau and Bau, the duties of a student and a householder are not dealt with under the *āśramas*. Because the rules for a perpetual student, the subject of the first *āśrama*, are the same as those for a temporary student, the author merely points out that he should observe them until death [2.21.6]. The rules for a householder are not even mentioned, because they are dealt with in the section on marriage [1.8-21]. The paragraph on *āśramas* in Ap, therefore, like the corresponding sections in Gau and Bau, stands outside the framework of the book, even though, unlike Gau and Bau, Āp accepts the validity of the *āśrama* theory. Renunciation is thus included within the scope of his work, although it stands outside the main body of the book.

Āp, nevertheless, suspects the motives of those proponents of the theory who claim that the celibate *āśramas*, in particular renunciation, are superior to that of the householder. He is at pains to demonstrate the equality of all *āśramas* with reference to the acquisition of the ultimate goal, a view not shared by most dharmaśāstric writers. He calls this ultimate goal *kṣema* (security), a word he uses to mean final liberation. Āp seems to have been more familiar with the currents of contemporary philosophical thought than either Gau or Bau. He devotes an entire chapter [1.23] to discussing the path to *kṣema*. In brief, his view is that two things must co-operate to give *kṣema* : (A) Recognition that all creatures subsist in the Self (*ātman*) and the Self in every creature; (B) The eradication of the fifteen faults[17] through the practice of Yoga. Knowledge and yogic activity must go hand in hand. Ap's acquaintance with the liberation philosophies of his time enabled him to deal fairly and seriously with the arguments of his opponents, a characteristic not common in many dharmaśāstric writers.

Āp devotes twenty-four *sūtras* [2.23.3-11 and 2.24.1-15] to refuting the arguments in favour of the superiority of the celibate *āśramas*. These arguments, according to Āp [2.23.3-8], are twofold. First, there is the purāṇic statement, assumed to be Vedic (*śruti*) by Ap [2.23 8], according to which only celibates attain immortality:

> Those eighty thousand sages who desired offspring passed to the south by Aryaman's road and obtained burial grounds. Those eighty thousand sages who desired no offspring passed by Aryaman's road to the north and obtained immortality.[18] [Āp 2.23.4-5]

Second, there are the visible results (*pratyakṣaphala*)[19]: those who keep the vow of celibacy obtain their wishes by merely conceiving them. For instance, by a mere thought, they produce rain, bestow children, see what is far away and move as quickly as thought [Āp 2.23.6-7]. These are the well-known miraculous powers (*siddhi*) of Indian holy men and yogins.

Ap's refutation is made at different levels. First, he appeals to Vedic authority to demonstrate the necessity of marriage and the performance of rites [2.23.9]. Second, according to him [2.23.10-11] the term 'burial grounds' in the above purāṇic passage does not refer to rebirth but merely ordains the last rites for those who have performed many sacrifices. The Vedas, moreover, declare that there is a reward without end (*anantyaṃ phalam*) awaiting such people, which reward is termed 'heavenly' (*svargya*). Thus, Āp equates the old ideal of heaven with the eternal immortality of the new schools of thought. Following this line, he restates Bau's argument that man's immortality lies in his offspring [Āp 2.24.1-14], citing the Vedic text : "In thy offspring thou art born again ; that, O mortal, is thy immortality" [Tait. Br. 1.5.5.6]. This is echoed by Vas [17.1-5].

---

[17] They are: anger, excitement, wrath, greed, delusion, deceit, hostility, lying, gluttony, calumny, envy, lust, hatred, neglecting to subdue the senses [*ānātmyam*] and neglecting to concentrate the mind [*ayogaḥ*]—Āp 1.23.5.

[18] The commentator Haradatta explains 'burial grounds' as fresh births. Thus they remain subject to the process of repeated births and deaths. At Yāj 3.186 these sages who are subject to rebirth [*punarāvartinaḥ*] are explicitly called householders [*gṛhamedhinaḥ*].

[19] Compare this with the question about the visible fruits of a renouncer's life *sandiṭṭhikaṃ sāmaññaphalam* that King Ajātaśatru put to the leaders of renouncer sects of his time, including the Buddha. Cf. *Dīgha Nikāya, Sāmaññaphalasutta.*

Earlier in the discussion on *āśramas*, at the end of the section on the renouncer, he refers to the opinion of some [2.21.13-14] regarding the means of liberation which would make renunciation superior to the other *āśramas*. These assert :

> Abandoning truth and falsehood, pleasure and pain, the Vedas, this world and the next, he [the renouncer] shall seek the Self. Knowing it, he gains salvation (*kṣema*).

According to Āp, this is opposed to both the scriptures and reason, "for if salvation were obtained by the knowledge of the Self, then he ought not to feel any pain even in this world" [2.21.16].[20] We have seen already that according to Āp *kṣema* is obtained by the knowledge of the Self combined with the practice of Yoga. If knowledge alone liberates, then action becomes useless and renunciation, which cultivates non-action, is seen to be superior. By insisting on Yoga, Āp, in the same way as the *Bhagavadgītā*, tries to diminish the importance of renunciation. We are not sure what precisely he meant by 'yoga', but it clearly involved more than the controls and techniques of classical Yoga. For him it meant first and foremost the eradication of the fifteen faults mentioned above and the cultivation of their opposites and other virtues. He lists twenty-two such virtues,[21] the cultivation of which is a duty common to all four *āśramas*. Those who practise them enter the All, i.e. the universal Self (*sārvagāmtī bhavati* : 1.23.6). Thus Ap finally bases the equality of the *āśramas* on the fact that through any of them a man is able to achieve liberation [cf. 2.21.2]. He is thus the first dharmaśāstric writer to realize that the arguments for the superiority of renunciation can be countered only by denying the renouncers a monopoly over liberation. He is thus able to conclude this long and intricate discussion in a conciliatory note :

---

[20] This is further evidence of the belief among renouncers that liberation could be achieved during one's lifetime, a belief that found expression in the term *jīvanmukti*.

> But even though some (celibate or renouncer) may gain heaven through a portion of (the merit acquired by his former) works or through austerities whilst he is still in the body, and though he may accomplish (his objects) by his mere wish, still this is no reason to place one *āśrama* above the other.[22] [Āp 2.24.15]

Yāj, many centuries later, takes up this theme again and openly declares that even a householder who keeps to his *dharma* can achieve liberation :

> Even a householder who has acquired wealth justly, is established in the knowledge of the Truth, is kind to guests, performs *śrāddhas*, and speaks the truth is, indeed, liberated.[23]

Vas is the first dharmaśāstric writer to make a serious attempt at structurally integrating the theory into the framework of his treatise. He realized the potential of the *āśrama* theory for organizing dharmaśāstric material. As we have seen, his predecessors hardly deal with the duties of the first *āśrama*, because they are the same as those of the studentship following initiation. They completely ignore the householder in the discussion of *āśramas*, because his duties are dealt with under the sacrament of marriage. Vas, on the other hand, gives a more prominent role to the *āśramas*, dealing with them before the sacraments. He devotes one chapter to each *āśrama* and deals with the duties of both the student [ch. 7] and the householder [ch. 8] within the framework of the *āśramas*. Vas, therefore, represents an important advance in the process of incorporating the *āśrama* theory and renunciation into the dharmaśāstric framework.

---

[21] They are : freedom from anger, from exultation, from wrath, from greed, from delusion, from deceit, and from hostility, truthfulness, moderation in eating, not calumniating, freedom from envy, liberality, non-acceptance of gifts, uprightness, affability, extinction of passions, subjection of the senses, peace with all created beings, concentration regulation of one's conduct according to that of the Āryas, peacefulness and contentedness. Āp 1.23.6.

[22] *syāt tu karmāvayavena tapasā vā kaścit saśarīro 'ntavantaṃ lokaṃ jayati saṃkalpasiddhiś ca syān na tu tajjyaiṣṭhyam āśramāṇām.* Āp 2.24.15.

[23] *nyāyōgatadhanas tattvajñānaniṣṭho 'tithipriyaḥ / śrāddhakṛt satyavādī ca gṛhastho 'pi hi mucyate.* Yāj 3.205 //

Vas also opens a new chapter in the discussion of *āśramas* ; he is the first śāstric writer to ignore the controversies regarding the validity of and the superiority among the *āśramas*. His discussion is totally free of acrimony. This may be due to the fact that by the time of Vas the heat of the controversies immediately following the invention of the *āśrama* theory may have died down. The only evidence of the uneasy truce between the supporters of the celibate *āśramas* and those who favoured married life, to which category belonged all the dharmaśāstric writers, is found in the eulogy of the householder's *āśrama* :

> A householder alone performs sacrifices, a householder alone performs austerities. Therefore, the householder's is the most distinguished of the four *āśramas*. [Vas 8.14]
>
> As all rivers, both large and small, find a resting place in the ocean, so men of all *āśramas* find support in the householder. [Vas 8.15]
>
> As all creatures subsist resorting to their mothers, so all mendicants subsist resorting to the householder. [Vas 8.16]

This trend is followed by later dharmaśāstric writers, who often refer to or cite Vas in this regard.[24]

---

[24] Cf. M 3.77-79 ; 6.89-90 ; Vi 59.27-29.

Given the *āśrama* theory he was working with, Vasiṣṭha's attempt at a structural integration of the *āśrama* theory was bound to be less than a total success. The *āśramas*, according to this view, are permanent states freely chosen at a definite juncture of a man's life. The sacramentary rites (*saṃskāra*), especially initiation and marriage, around which the dharmaśāstric material on right conduct (*ācāra*) had thus far been arranged, are performed successively and open progressively new chapters in man's earthly sojourn. As they stood, the two structures were not amenable to synthesis. Vas had gone as far as he could by organizing the material around both the *āśramas* [ch. 7-10] and the sacraments [ch. 11-15]. The two sections, however, hang loosely together and the overall unity of the work has suffered thereby. Since the first and second *āśramas* by and large deal with the same subject matter as initiation and marriage, duplication and repetition were bound to occur. A fuller synthesis had to await the recasting of the *āśrama* theory that took place sometime between Vas and the rise of the metrical *smṛtis*.[25]

The third stage in the process of incorporating the *āśrama* theory and renunciation into the dharmaśāstric framework is represented by Manu and the later *smṛtis*.[26] The interval between Vas and Manu, which may roughly correspond to the first century before and the first after the beginning of our era, saw a radical revision of the āśrama theory. It must have taken place a considerable time before Manu, for he presents the revised version without any attempt to justify it. During his time it must have been the standard theory. The revised version differed from the original theory on the following points: (A) The āśramas are not viewed as permanent states of life; (B) Rather, they are stages through which under normal circumstances every twice-born man is expected to pass; (C) Consequently, one does not choose an āśrama; the passage from one āśrama to the other takes place at regular and predetermined intervals; (D) The first āśrama is no longer perpetual studentship; it is amalgamated with the temporary studentship that follows initiation. This version of the āśrama theory is known to medieval authors as *samuccaya.*

---

[25] Our discussion of the place of the *āśramas* within the structure of each *dharmasūtra* shows that Lingat's comments on the plan followed by the authors of these texts are an oversimplification. He says: "The general plan [of the *dharmasūtras*] though often somewhat irregularly observed, consists of taking the Brahmin as a basis, following him through the four *āśramas*, and then formulating rules peculiar to the three other *varṇas*." R. Lingat, *The Classical Law of India*, tr. J. D. M. Derrett (Berkeley: University of California Press, 1973), p. 52.

[26] For the study of this stage I have used Manu. Yāj, Vi and Vai. The first two are the only complete metrical *smṛtis* extant. Vi and Vai, though they are called dharmasūtras, in their present form belong to a period after Manu and share the latter's view of the *āśramas*.

There is another version of the āśrama theory known to medieval writers as the *vikalpa* (option) view. It is not the same as the theory found in the dharmasūtras, although many uncritically assume their identity because the latter version also allows an option. The *vikalpa* view, as found, for example, in the *Jābāla Upaniṣad* [4], is a mere variant of the *samuccaya* theory. It accepts that the āśramas are not permanent states, that one can pass from one āśrama to another, and that the studentship following initiation constitutes the first āśrama. The only difference is that according to it one may renounce from any of the preceding three āśramas without going through them sequentially as required by the *samuccaya* theory.

The *samuccaya* version so eclipsed the original version that even modern scholars habitually take the former to be the only version of the āśrama theory. For example, R. Lingat, even states: "It is only in the *dharmasūtras* that the four āśramas appear as successive stages of life" [op. cit., p. 47]. The *samuccaya* view is taken for granted even in the modern courts of India: cf. Kameswara Sastri v. Veeracharlu, (1910) 34 Mad. 428, cited by J.D.M. Derrett, *Religion, Law and the State in India* (London: Faber & Faber, 1968), p. 70. A very common mistake made by scholars is to assume that, because the studentship following initiation is the first *āśrama* according to the *samuccaya* view, it must be so even in the *dharmasūtras*. Thus, H.D. Sharma says without hesitation : "According to Āpastamba [II.9.21.8] a man should enter Sāṃnyāsa only after he has already fulfilled the duties of the student stage, and that he should remain chaste."[27] Neither Āp nor any other *dharmasūtra* takes this studentship to be a stage of life (*āśrama*). Lingat also [op. cit., pp. 45-46] discusses the studentship following initiation, generally described in the first chapters of the *dharmasūtras*, as if it were the first *āśrama*. This state of affairs is all the more disconcerting because several scholars have already pointed out the different conception of the *āśramas* in the original theory. Farquhar already in 1920 stated :

> It is well to note that in the time of these sūtras each man chooses his own aśrama, i.e. whether he is to remain a student, or become a householder, a hermit, or a sannyāsī : these modes of life have not yet become a series through which each man is expected to pass.[28]

Similar statements, although not as explicit, were made by P. Deussen in his article on *Āśrama* in the *Encyclopedia of Religion and Ethics* (1919) and by M. Winternitz, "Zum Lehre von den Aśramas," *Beiträge zur Literaturwissenschaft und Geistesgeschichte Indiens*, Festgabe Jacobi zum 75 (Bonn 1926), pp. 218-219. R.P. Kangle commenting on the *āśrama* theory in Kauṭilya's *Arthaśāstra* says :

> It would in fact, appear that the four *āśramas* are presented as four different ways of life to be adopted according to

---

[27] "Contributions to Brāhmaṇical Asceticism," *The Poona Orientalist*, III, no. 4 (1939), p. 22. An uncritically idealistic picture of the *āśramas* based on the *samuccaya* theory is given by J. Basu, "The Role of Asramas in the Life of the Ancient Hindus," *Journal of Indian History*, XLII, pp. 847-876.

[28] *An Outline of the Religious Literature of India* (Oxford 1920), p. 40.

one's aptitude and bent of mind, rather than as successive stages in the life of the same individual.[29]

The structure of the *āśramas* in the revised version of the theory dovetails perfectly into the sacramentary model, specifically initiation and marriage. In the revised theory these sacraments are indeed seen as the rites of entry into the respective *āśramas*. Through Vedic initiation one enters the first *āśrama*. After completing his Vedic studies, the young man returns home and through the sacrament of marriage enters the householder's *āśrama*. Rites of entry into the last two *āśramas* were similarly viewed as the doors to the modes of life that prepare a man for death.

The new theory is foreshadowed by Āp, who gives the opinion of some according to which one could become a hermit after marriage :

> Now, some enjoin only in the case of a hermit the successive performance (of the acts prescribed for the *āśramas*). After completing his Vedic studies, he should take a wife, kindle the sacred fires and begin the rites that end with the Soma Sacrifices, performing as many as are prescribed in the Veda. Afterwards he should build a dwelling and live outside the village with his wife, children and fires, or alone. [Āp 2.22. 6-9]

Thus, already during the time of Āp it was the opinion of some that the hermit was an exception to the rule that an *āśrama* has to be selected immediately after completing one's Vedic studies and that it was not permissible to abandon one *āśrama* and assume another.

Manu is the first dharmaśāstric writer to adopt the revised theory. It offers him a perfect framework in which to organize his material on right conduct (*ācāra*). He does so in chapters 2-6. Following the pattern set in the *dharmasūtras* after a

---

29. *The Kauṭilya Arthaśāstra* (Bombay : Univ. of Bombay, 1965), III, p. 151.

brief discussion on the sources of *dharma* [2.1-25] and the pre- and post-natal sacraments [2.26-35], Manu deals with initiation and studentship, which now is identified with the first *āśrama* [2.36-242]. Next, he deals with marriage and the householder's *dharma* as the second *āśrama* [ch. 3-5]. Lastly, in chapter 6, he discusses the *āśramas* of a hermit and a renouncer. The synthesis of the sacramentary and *āśrama* models gives a more perfect structure to the *ācāra* section of Manu and a greater unity to the entire work.

The sacramentary format of the revised theory demanded that the time for entering each *āśrama* be regulated. The first two *āśramas* presented no problem ; the entry into them coincided with the time for initiation [M 2.36-38] and marriage [M 3.1 2], already settled in the dharmasūtras. The time for becoming a hermit given by Manu is vague : "When a householder sees his skin wrinkled and his hair white, and the sons of his sons, then he may resort to the forest" [M 6.2 ; cf. Vi 94. 1-2]. The time for entering the fourth *āśrama* is not specified at all. Manu merely states : "He who, after passing from *āśrama* to *āśrama*, after offering sacrifices and subduing his senses, tired of giving alms and offering food, becomes a renouncer, gains bliss after death" [M 6.34]. Neither Vi [96.1] nor Yāj [3.56] offers anything more specific. The lack of specificity with regard to the time for renunciation points to a weakness in the otherwise admirable structure of the revised theory. Two *āśramas* for old age were unnecessary and cumbersome ; in the theory they performed similar functions. One was bound to become redundant. As we shall see, it was the hermit, representing the weaker of the two institutions, who finally gave way.

A more abstract but a much neater division of these stages is given in Manu 4.1 and 6.33. According to it[30] a man should spend the first quarter of his existence in the first *āśrama*, the second quarter in the second, the third quarter in the third and the fourth quarter in the fourth *āśrama*. Taking the Vedic view that a man's life-span is a hundred years,[31] a person should spend twenty-five years in each *āśrama.*[32] This view is found only in Manu, and even Vi and Yāj, who follow him closely seem to have thought it wise to forget it.

---

[30] This view is supported by Manu 5.169 and 6.1.

The influence exerted by the original version of the theory on the proponents of the revised version is apparent in Manu 3.2. There he tells us when a student in the first *āśrama* is allowed to become a householder, which is reminiscent of what Vas says regarding the person entitled to choose one of the *āśramas* :

Vas 7.3	Manu 3.2
teṣāṃ vedam adhītya vedau vedān vāviśīrṇabrahmacaryo yam icchet tam āvaset//	vedān adhītya vedau vā vedaṃ vāpi yathākramam/ aviplutabrahmacaryo gṛhasthāśramam āvaset//
After studying one, two or three Vedas, a man who has not violated the vow of celibacy, may enter the one among these (*āśramas*) that he prefers	After studying in due order three, two or even one Veda, a man who has not violated the vow of celibacy should enter the householder's *āśrama.*

Choice is replaced by obligation. The *adhikārin* (person qualified) for any *āśrama* becomes the *adhikārin* for only the householder's *āśrama.*

Within the revised theory the controversy regarding the superiority among the *āśramas* should have become meaningless. After all, it is vain to argue that one quarter of a man's life is superior to another. Superior or not, one has as much choice in their regard as one has in growing old. Nevertheless, the argument continues, but it has narrowed to the point of becoming a controversy on the relative superiority between the householder and the renouncer. We have seen that even after the revised version became the standard theory, one current of thought allowed a person to renounce immediately after the first *āśrama* without becoming a householder. This presented a threat to the centrality of the latter and is combatted by Manu as well as by Vi and Yāj. Their refutation operates at two levels. First, they follow Vas [8. 14-16] in eulogizing the householder, calling him the support and the foundation of the rest and the most excellent of the *āśramas*,[33] Second, they use the argument of the three debts, no longer as in Bau to prove that there is only one *āśrama*, but to oblige all to pass through at least the first two *āśramas* before renouncing. Manu [6. 35-37] declares that a man should set his mind on liberation, i.e. enter the renouncer's *āśrama*, only after he has settled his three debts. The idea is that one has to achieve freedom from debt before one can aspire to the higher freedom of renunciation Yāj [3.57] echoes the same argument. Vi [37.29] and Manu [11.66] number the non-payment of the debts to gods, manes and sages among sins causing loss of caste (upapātaka).

---

[31] *śatāyuḥ puruṣaḥ* : *Tait. Saṃ.*: 1.5.2.2 ; 1.5.7.6 ; 2.3.2.1, etc. ; *Mait. Saṃ.*, 1.6.4 ; 1.6.11 ; 1.7.5, etc ; *Kāṭh. Saṃ.*, 9 2 ; 11.4 ; 12.11, etc. ; *Ait. Araṇyaka*, 2.2.1.

[32] Cf. Hemādri, *Caturvargacintāmaṇi* (Bibliotheca Indica, 74 ; Calcutta 1873-1911), III, 3, pp. 783-784.

The emphasis on the payment of the three debts made the obligation to pass through all *āśramas* redundant. One can pay them in the first two *āśramas*. Thus, while Manu [6.33 and Vi [96.1] insist on a man's passing through the first three *āśramas*

---

33. Cf. M 3.77-79 ; 6.89-90 ; Vi 59.27-29. Bühler is wrong to assume that M 3.77-79 is an interpolation, because "most of its verses ought to stand in the discussion of the relative importance of the orders [*āśramas*] at the end of chapter VI." *The Laws of Manu* (SBE, Vol XXV ; Oxford 1886), pp. lxviii. This is another example of the inability to see the progress made in the discussion of *āśramas*. It is true that both Proto-Bau and Āp deal with "the relative importance of the orders" at the end of the discussion on *āśramas*. But this trend is certainly broken by Vas, who eulogizes the householder within the section on the second *āśrama* [Vas 8.14-16]. The example of Vas is followed by Manu and Vi [59.27-30].

before entering the fourth, Yāj [3.56] simply states that one may renounce from the hermit's or the householder's *āśrama* (*vanād gṛhād vā*). Thus progressively less importance is given to the hermit with the result that in Purāṇic times it falls into complete desuetude and is listed among the practices forbidden in the Kali age.[34] Therefore, if not in theory at least in practice the revised version only requires a man to pass through the student and householder stages before taking to renunciation.

An interesting feature of Manu, Vi and Yāj is that, unlike the dharmasūtras, none of them enumerates the four *āśramas*. It seems that the *āśrama* theory had become so commonplace as to render their enumeration superfluous.

In Vi we for the first time come across the use of the expression *varṇāśramadharma* (*dharma* of *varṇas* and *āśramas*) as a shorthand term to indicate the entire body of *dharma*, an expression which was to become commonplace in later Hinduism. In the opening chapter of the book, the goddess Earth requests Viṣṇu : "Communicate to me, O Eternal One, the duties of *varṇas* and *āśramas* (*varṇāśramāṇām ca dharmān vada sanātana* : Vi 1.48 ; cf. Vi 1.47, 62-63). A similar expression is used by Yāj in the opening verse of his treatise [1.1].

Vi generally follows Manu in organizing his material on right conduct (*ācāra*) around the *āśramas*. For some reason, however, he places the discussion on sin and penance [ch. 33-57] between the section on the first *āśrama* [ch. 27-32] and those on the other three [ch. 58-96]. Moreover, he deals with certain topics falling within *ācāra*, e g. funeral rites, purification and duties of women, outside the framework of the *āśramas* [ch. 19-26].

Yāj, who is the first author to divide his work neatly into three sections dealing with right conduct (*ācāra*), law (*vyavahāra*) and penance (*prāyaścitta*), discusses the third and fourth

---

[34] Cf. P. V. Kane, op. cit., II. pp. 928-29, III. 885-968. B. Bhattacharya, *The 'Kalivarjyas' or Prohibitions in the 'Kali' Age*. Calcutta 1943.

āśramas in the section on penance. Thus he effectively organizes the material on right conduct around the first two *āśramas*. It is difficult to see what prompted him to view the last two *āśramas* as in some way connected with penances. There was, however, a growing tendency to view the hermit's life and renunciation as periods of penance and repentance to expiate former sins and to prepare for death. Renunciation in particular is said to be a means of purification [M 5.108 ; Vi 22.91 ; Yāj 3.32] ; it destroys sin [M 6.85, 96]. An ascetic mode of life is prescribed as a penance for murder, adultery and theft [M 11.79, 102, 106, 129-131].

In this third stage, therefore, we have a complete integration of the *āśrama* theory in its revised form into the dharmaśāstric framework ; it has become the focus around which the dharmaśāstric material is arranged. Renunciation is no longer external or peripheral to *dharma* ; it has become one of its most important areas—the *mokṣadharma*—giving rise to the broad division of *dharma* into *pravṛttidharma* and *nivṛttidharma*. The latter is a synonym for renunciation.

II

DHARMAŚĀSTRAS AND THE RULES OF RENUNCIATION

With the increase in importance of the *āśrama* theory there was a parallel increase in the attention paid by the *dharmaśāstras* to the rules governing renunciation as an institution and the life and activities of renouncers. These rules generally fall into two categories. The first consists of rules that regulate renunciation and renouncers in so far as they constitute a distinct religious institution. I shall discuss these rules in the present section of this paper. Renouncers, in spite of their rejection of society and social relationships, exist in the world of men and come into contact with social institutions. The second category of rules regulates the intercourse between renouncers and society. These rules will be studied in the fourth part of this paper, which deals with renouncer's position in Hindu law.

The *dharmaśāstras* give a progressively increasing number and variety of rules on renunciation.[35] In other areas of *dharma* this may offer valuable information regarding the development of an institution and of laws associated with it. Unfortunately, the problem is more complex with regard to renunciation. Dharmaśāstric rules on renunciation, like most other rules contained in these works,[36] are customary laws. They are either based on actual customs observed among renouncers or borrowed from specialized works on renunciation, which had codified customary practice. Pāṇini,[37] for example, speaks of the *bhikṣusūtras* composed by Pārāśarya and Karmanda. The dharmaśāstras themselves refer to a specialized work on hermits composed by Vikhanas.[38] There is no reason to doubt that they depended on similar specialized treatises, such as those mentioned by Pāṇini, in expounding the rules of renunciation. Vas [21.33] explicitly refers to such treatises, further corroborating the evidence of Pāṇini. The problem, therefore, that faces the student of these śāstric rules is that their development is evidence only of the growing involvement of the *dharmaśāstras* with the subject of renunciation. They are not necessarily evidence of a development within the institution of renunciation. In other words, we cannot depend on the evolution of śāstric rules on renunciation to trace the historical development of renunciation

---

[35] In this section I have deliberately left out those rules that deal with the general life-style of renouncers: poverty, celibacy, homelessness, wandering, mendicancy, rain residence, etc. Several works have dealt with this topic extensively: P. V. Kane, op. cit., II, pp. 931-938; H. D. Sharma, op. cit., pp. 39-48; P. Olivelle, *The Origin and the Early Development of Buddhist Monachism* (Colombo; M. D. Gunasena, 1974), pp. 8-24.

[36] Cf. R. Lingat, op. cit., pp. 135-206.

[37] *Aṣṭādhyāyī*, 4.3.110-111.

[38] Cf. Gau 3.27: Haradatta interprets '*śrāmaṇaka*' as '*vaikhānasaṃ śāstram*'; Bau 2.11.14-15; 3.3.15,17; M 6.21.

The status of dharmaśāstric provisions has been a matter of controversy among scholars. It has been argued that India knew no law other than custom ; *dharmaśāstras* are nothing more than the codification of customary law. This certainly is an overstatement, as admirably demonstrated by Lingat.[39] Once customs were codified in *śāstras* they assumed an independent existence. The codified rules were invested with the transcendent authority of Vedic *dharma.* They could not be abrogated ; their development occurred mainly through the labours of interpreters and exegetes. The *śāstras* thus influenced and regulated custom ; they became the yardsticks of proper conduct *(ācāra).* This general observation is valid also in the area of renunciation. The *śāstras* did not merely reflect the customs prevalent among renouncers ; they became normative texts for succeeding generations of Hindu renouncers.[40] The śāstric provisions, on the one hand, served as the basis for medieval debates on controversial points, e.g. qualification for renunciation. abandonment of the sacrificial thread. On the other hand, they reflect similar controversies of a more ancient period. Their study, therefore, is not without interest for the history of Hindu renunciation.

In one important aspect the rules on renunciation differ from other śāstric rules. Whatever may be said about a legislative authority, there existed without any doubt in traditional

---

[39] R. Lingat, op. cit., pp. 137-142. J. D. M. Derrett observes : "Such instances dispose at once of the extreme notion, once commonly heard, that śāstric texts never played a practical role, or that if they did, they did so only when it pleased some individuals to invoke them." 'Appendix by the Translator' to Lingat's *The Classical Law of India*, ed. cit , p. 274.

[40] An admirable example of this is given by J. D. M. Derrett, "Modes of Sannyāsīs and the Reform of a South Indian Maṭha Carried out in 1584," *Journal of the American Oriental Society*, XCIV (1974), pp. 65-72 ; reprinted in his *Essays in Modern Hindu Law* (Leiden : E. J. Brill, 1976), Vol. 1, pp. 111-119.

India a judicial and executive authority which could enforce the śāstric provisions. This authority was vested in the king and the heads of corporate entities such as guilds. Prior to the organization of *maṭhas* (monastic centres) around the time of Śaṃkara (8th cent. A.D.), there was no bearer of such judicial power among Hindu renouncers. Buddhist monks and other non-Hindu renouncer groups had a special judicial setup. In the Buddhist *saṅgha* judicial power was exercised by the entire community resident in a given monastery.[41] We have no evidence as to how this power was exercised in other sects. However, Hindu law recognized the authority of these groups to enforce their respective laws on their members. As a last resort the king himself could intervene to see that the judgements of these authorities were carried out.[42] As far as we know, the Hindu renouncer, to whom the śāstric prescriptions are addressed, was not subject to such a corporate judicial authority. The śāstric rules were, therefore, at best guides to the renouncers. There was no recognized authority that could enforce those rules and punish the violators. This situation probably helped sham renouncers who were as common in ancient India as today. Nevertheless, the śāstric provisions presupposed, and in their turn created, certain expectations within the Hindu public. These expectations, especially in the area of morality and holiness, had to be met by renouncers if they were to gain the support of the people on whom they depended for their very livelihood. A passage of Kauṭilya's *Arthaśāstra* [3.16.42] suggests that the king may have often taken it upon himself to oversee the conduct of renouncers in his realm. Kauṭilya admonishes the king to punish wayward renouncers *(pravrajyāsu vṛthācārān rājā daṇḍena vārayet)*.

---

[41] Such judicial acts were known as '*saṅghakamma*' : cf. S. Dutt, *Early Buddhist Monachism* (2nd ed. ; London 1960), pp. 120-145. In Jaina monasticism the role of judge was normally assumed by the *ācārya* : cf. S. B. Deo, *History of Jaina Monachism* (Poona 1956), p. 379.

[42] Cf. N 10.1-6 ; Yāj 2.185-191.

QUALIFICATION FOR RENUNCIATION

Entry into renunciation, as we saw, was viewed increasingly in terms of a sacrament. A sacrament is a ritual act, and the first question confronting an exegete dealing with a rite concerns the person qualified or entitled to perform it *(adhikārin)*. Who is entitled to renounce ? This question is neither formulated nor explicitly answered in the *dharmaśāstras*. Later debate on this controversial point, however, centers around śāstric evidence. It may be fruitful, therefore, to examine their implicit assumptions.

The controversy regarding qualification boils down to two questions : A) At what point in life is a man allowed to renounce ; B) To what *varṇa* should a man belong in order to be entitled to renounce. A related question is whether it is permissible for women to renounce.

The first question is by far the older and is dealt with more fully in the *dharmaśāstras*. The earliest opinion, recorded in Gau, Proto-Bau, Āp and Vas, was that a young man who has completed his Vedic studies may choose one of the four *āśramas*. He may, therefore, decide to become a renouncer at this stage.[43] Manu [6.33] and Vi [96.1] give the opinion that one should renounce from the hermit's *āśrama*. However, the growing tendency, already present in Manu [6.35 37], was to lay emphasis on the payment of the three debts—study, sacrifice and procreation—before renouncing. This gives rise to the view, expressly declared by Yāj [3.56], that one may renounce as a householder provided one has paid the three debts. No doubt other variants of these principal views were held by some. Deutero-Bau [2.17.1 6] gives five such views, each of which restricts renunciation to one of the following : 1) those who have completed their Vedic studies ; 2) *śālīnas* and *yāyāvaras* who are childless ; 3) widowers ; 4) those who are seventy years old and have established their children in their duties ;

---

[43] Cf. Gau 3.1 ; Bau 2.11.9,12 ; Āp 2.21.3,8 ; Vas 7.3.

5) hermits. A similar enumeration of those qualified to renounce is given in Vai 2.6. These opinions are interesting in that all save the first restrict renunciation to those who are no longer able to shoulder the full burden of household duties. Such currents of thought may have been the forerunners of the view apparently widespread among conservative elements of Brāhmaṇism that renunciation and perpetual studentship were meant only for those who, for some reason or other, were either not able or not entitled to assume household responsibilities, e.g. the blind, the deaf, the crippled and the impotent.[44]

The question of the *varṇa* of those entitled to renounce is not explicitly dealt with in the *dharmaśāstras*. Nevertheless, they betray certain implicit assumptions in this regard. According to the original *āśrama* theory, a person who has completed his Vedic studies can select an *āśrama*, including renunciation. No further specifications are added. Now, initiation and Vedic study were not only permitted but obligatory on all twice-born *varṇas*, viz. Brāhmaṇa, Kṣatriya and Vaiśya. Thus the assumption has to be that renunciation was open to all twice-born men. There is nothing in Manu, Vi or Yāj to indicate that they did not share this view. Medieval proponents of the view that only Brahmins are entitled to renounce see in the use of the words *brāhmaṇa*, *dvijottama* and *vipra* by Manu [5 108 ; 6.38, 70, 93, 97] scriptural support for their opinion. Such an interpretation is misleading. Dharmaśāstric writers often direct their prescriptions at Brahmins without intending to limit them to Brahmins. Furthermore, using the same argument, we can show that both Manu and Yāj permitted all twice-born to renounce, for both these authors use the word *dvija* (twice-born) with reference to renouncers (cf. M 6.40, 75, 91, 94 ; Yāj 3.61]. However, the increasing use of the words *brāhmaṇa*, *dvijottama* and *vipra* in the metrical *smṛtis* shows that even though theoretically the prescriptions of these texts apply to all twice-born, they were, in fact, beginning to be addressed primarily to Brahmins As M. Biardeau observes, "Une lecture attentive des premiers chapitres de la *Manu-smṛti*, par exemple,...révéle que le 'deux-fois-né' auquel s'adressent les prescriptions est en fait le brāhmane".[45]

---

[44] That this was widespread is indicated by the frequency with which it is attacked by the proponents of renunciation : cf. Śaṃkara on *Vedāntasūtra*, 3.4.20 ; Sureśvara, *Bṛhadāraṇyakopaniṣadbhāṣyavārttika* (Ānandāśrama Sanskrit Series, 16 ; Poona 1894), p. 1908, verse 1144 ; Medhātithi on M 6.36 ; Vijñāneśvara on Yāj 3.56-57. A similar argument is used by Bhīma to dissuade Yudhiṣṭhira from renouncing after the victorious battle : *Mahābhārata*, 12.10.17.

The first and, as far as I know, the only *dharmaśāstra* to limit renunciation to Brahmins is the Vai, which has to be dated after Manu and Yāj. Its distribution of the *āśramas* among the *varṇas* is too neat to be anything but an abstract formula : "For the Brahmin there are four *āśramas*, for the Kṣatriya the first three and for the Vaiśya only the first two" [Vai 1.1,9].[46]

Even though there is not a single explicit statement in the classical *dharmaśāstras* barring Śūdras from renunciation,[47] it is evident that in their view renunciation was not meant for Śūdras. According to all these works a person had to undergo initiation and complete Vedic study before renouncing. Now, Śūdras are entitled neither to be initiated nor to be taught the

---

[45] M. Biardeau, *Le Sacrifice dans L'Inde Ancienne* (Paris : Presses Universitaires de France, 1976), p. 32

[46] For a discussion of the medieval controversy on this point see P. V. Kane, op. cit., II, pp. 942-944. In medieval times the very existence of Kṣatriyas and Vaiśyas in the Kali age was questioned : cf. ibid., II, pp. 380-382. A considerable body of opinion claimed that in our age society consisted of only Brahmins and Śūdras. This theory may have influenced the growing belief among medieval writers that only Brahmins are allowed to renounce.

[47] Such statements are, of course, found in later *smṛtis*. Atri (19.37) lists renunciation among the six causes that degrade Śūdras and women : *japas tapas tīrthayātrā pravrajyā mantrasādhanaṃ | devatārādhanaṃ caiva strīśūdrapatanāni ṣaṭ ||*. In the *Mahābhārata* 13.150.*692 a Śūdra confesses that he is not entitled to resort to the four *āśramas* : *śūdro 'haṃ nādhikāro me cāturāśramyasevane ||* Cf. *Śāntiparvan*, 62.2 ; *Vanaparvan*, 149.36. See also Kātyāyana's statement below fn. 52.

Veda.[48] Here, as well as in renunciation of women, we must distinguish three questions : (1) Its legitimacy in the eyes of *dharma* ; (2) Its legality in the eyes of the law ; (3) Its historicity. The inability to separate these questions can only lead to confusion.[49] The *dharmaśāstras* are concerned only with the first question and it is certain that they considered the renunciation of Śūdras illegitimate. It is, however, equally certain that Śūdras did renounce.[50] Evidence for this is found in the *dharmaśāstras* themselves. Both Vi [5.115] and Yāj [2.235] ordain a fine of one hundred *paṇas* for a person who feeds a Śūdra renouncer (*śūdrapravrajita*) at a feast in honour of the gods or the manes. Kauṭilya [Artha 3.20.16] also prescribes a fine of one hundred *paṇas* for similarly feeding a *vṛṣalapravrajita* (Śūdra or outcaste renouncer) as well as Śākyas (Buddhist monks) and Ājīvakas. Here Śūdra renouncers are distinguished from those belonging to heretical sects. There is, however, a tendency in the *dharmaśāstras* to group together Śūdra and heretical renouncers, because their position is similar vis-a-vis the śāstric provisions. This general class of renouncers may be intended by Āp [1.18.31] when he lists "one who has renounced without keeping to the rule" (*avidhinā ca pravrajitaḥ*) among people whose food is not to be eaten. It was thus possible to renounce outside the śāstric prescriptions and evidence points to the fact that many Śūdras did so. The conclusion we can draw from the existence of Śūdra renouncers is that, although their renunciation goes against the *śastras*, nevertheless they were generally tolerated. Hindu law gives them a legal standing similar to that of the heretical renouncers.[51] There are, however, exceptions to this tolerance. According to Kātyāyana [486] the king should either corporally punish or fine a Śūdra who takes to renunciation.[52]

---

[48] Cf. *Pūrva-mīmāṃsā-sūtra*, 6.1.33. Gautama [12.4] states that if a Śūdra listens to the Veda molten lead should be poured in his ears, if he utters the Veda his tongue should be cut off and if he remembers the Veda his body should be hacked. One is not allowed to study the Veda in the presence of a Śūdra : Gau 16.18-19 ; Āp 1.9.9 ; Vas 18.3 ; Yāj 1.148.

[49] See, for example, P. V. Kane, op. cit., II, pp. 942-946 ; H. Chakraborty, *Asceticism in Ancient India in Brahmanical, Buddhist, Jaina and Ajivaka Societies* (Calcutta : Punthi Pustak, 1973), pp. 90-99 ; H. D. Sharma, op. cit., pp. 63-64.

[50] The Buddha, for example, in his conversation with King Ajātaśatru speaks of a slave's renunciation : cf. *Dīgha Nikāya*, ii. 35-36.

The case of women's right to renounce is similar to that of the Śūdras'. Theoretically women should be barred from renunciation, because they are not entitled to initiation or Vedic study. The *dharmaśastras*, moreover, consider women never to be independent: in childhood they are under the control of their fathers, in adulthood under that of their husbands and as widows under that of their sons.[53] Renunciation, on the contrary, implies total freedom and independence. Nevertheless, according to a text ascribed to Bau by Vijnāneśvara [on Yāj 3.58], some permitted even women to renounce (*strīṇām caike*). Such a provision, however, is not found either in Bau or in any other extant *dharmaśāstra*. Furthermore, the text of Atri cited above [fn. 47] clearly forbids the renunciation of women. It is, therefore, safe to assume that at least the mainstream of the śāstric tradition considered the renunciation of women as illegitimate.

Yet the *dharmaśāstras* themselves[54] bear witness to the fact that female renouncers did exist in ancient India and that they were fairly widespread. Vas [19.29-34] says that when a king has died the new king should maintain the chief queen as well as the other wives of the deceased. If, however, they do not wish to live under his care they may renounce : *anicchantyo va pravrajeran*. Manu [8.363] enjoins a small fine on those who secretly converse with female renouncers, even though the general rule is that such persons should be considered guilty of adultery and accordingly dealt with [M 8.356-358]. Manu's low opinion of female renouncers is shared by Yāj [2.293] and Kauṭilya [Artha 4.13.36], who impose a fine of only twenty-four *paṇas* for having intercourse with a female renouncer (*pravraj.tāgama*). This stands in contrast to the views of Vi [36.7] and Nārada [12.74], who consider sex with a female renouncer as a crime equal to that of violating the teacher's bed. The *Arthaśāstra* also indicates that female renouncers were a common phenomenon in ancient Indian society. There are numerous prescriptions in it affecting female renouncers and the king is urged to use them as spies.[55]

---

[51] On the question of the validity of a Śūdra's renunciation in modern Indian law cf. P. V. Kane, op. cit., II, pp. 951-952.

[52] *pravrajyāvasitaṃ śūdraṃ japahomaparāyaṇam/vadhena śāsayet pāpaṃ daṇḍyo vā dviguṇaṃ damam* / K 486. The term *'avasita'* is often used as a synonym of *'pratyavasita'* [cf. N 5.27,35 ; Yāj 2.183] In that sense this injunction would refer to a Śūdra who is an apostate from renunciation. But we favour, with Kane [note to K 486], the interpretation given in the *Vīramitrodaya* that *'avasita'* means *'sita'*. Thus it refers to a Śūdra who has taken to renunciation. This interpretation tallies with the next provision, i.e. *japahomaparāyaṇam*. *'Avasita'* is used in the latter sense by Aparārka and Śūlapāṇi on Yāj 2.192 and by Kātyāyana himself at K 679.

[53] Cf. Vas 5.1-[illegible] ; Bau 2.3.44-46 ; M 5.147-149 ; 9.2-3 ; Vi 25.12-13 ; Yāj 1.85-86 ; N 1.26-30,34,39.

[54] There is, of course, extensive evidence from other sources. Both the Buddhists and the Jains had orders of monks and nuns. The *Gaṇapāṭha*

Thus, although the renunciation of Śūdras and women was considered illegitimate by the *dharmaśāstras*, it was a common phenomenon in ancient India. This fact was recognized by law. Śūdra and female renouncers had a legal standing ; several provisions of Hindu law attempt to regulate their intercourse with society.

ENTRY INTO RENUNCIATION

Little information is contained in the dharmasūtras on the rite or ceremony that accompanies the act of renouncing. It is

---

(233 on Pāṇini 2.1.70) speaks of *śramaṇā*, *pravrajitā* and *tāpasī*. Patañjali on Pāṇini 3.2.14 refers to a female renouncer [*parivrājakā*] named Śaṃkarā. The *Arthaśāstra* is full of references to female renouncers, calling them *pravrajitā* [2.23.2 ; 4.13.36], *parivrājikā* [1.10.7 ; 1.12.4] and *bhikṣukī* [1.12.1 13 ; 3.3.13 ; 3.4.9 ; 5.1.19,50 ; 11.1.52].

[55] See the preceding note for references.

beyond doubt, however, that such a rite, at least in a rudimentary form, did exist during the *sūtra* period. Proto-Bau [2.11.16] says that one should give up one's relations and, without any possessions, renounce (*pravrajet*) "in the prescribed manner" (*yathāvidhi*). The statement, moreover, of Āp [1.18.31] that the food of those who have not renounced in the prescribed manner (*avidhinā pravrajitaḥ*) should not be eaten shows his awareness of a 'right way' to renounce. The term *vidhi* (rule, procedure) no doubt refers to some rite or procedure of renunciation laid down in the *śāstras*.

Vas is the first to give us any information about this procedure. He refers to one of its elements, namely the gift of safety (*abhayadakṣiṇā* or *abhayadāna*) to all creatures : "A renouncer should depart from his house after giving the gift of safety to all creatures."[56] This element of the renunciatory rite is mentioned also by Manu [6.39]. The gift of safety is the ritual expression of non-injury (*ahiṃsā*), a fundamental virtue of renunciation.[57]

Manu [6.38], Vi [96.1-2] and Yāj [3.56] provide us with further information on this rite. The candidate for renunciation is required to offer a sacrifice to Prajāpati (*prājāpatyeṣṭi*) at which all his possessions are given as a sacrificial fee to the officiating priests [*sarvavedasadakṣiṇā*). It was perhaps intended as a parallel to the Vedic *viśvajit* sacrifice.[58] Although the candidate was required to abandon all earthly possessions, it is very doubtful whether he actually gave all that to the officiating priests. The family of the candidate, especially if he was married and had children, would not have countenanced such a squandering of family property. Besides, there are explicit rules in the *dharmaśāstras* forbidding precisely such excessive generosity. According to Yāj [2.175] and Manu [11.9], one is permitted to give away wealth only if it does not harm the well-being of one's family. Charity, in other words, begins at home. In any case one is forbidden to give away all one's possessions, especially if one has children.[59] Furthermore, as we shall see, the property of the candidate was subject to partitioning among his heirs at the time of renunciation. Neither Vai nor Deutero-Bau, both of which give a detailed account of the rite, mentions the gift of all one's possessions to the priests. This requirement, however, is given in medieval treatises on the subject.[60] The sacrificial fee of all one's possessions was probably given only in a symbolic manner. Its importance lies in the fact that it was the ritual interpretation and expression of the duty to abandon all worldly possessions. Visualizing this abandonment as a sacrificial fee, the ritualists homologized it with the ancient custom of the *viśvajit*. Thus both the promise of non-injury and the abandonment of all possessions are viewed ritually as sacrificial fees *(dakṣiṇā)* paid at the conclusion of the renunciatory rite.

---

[56] *parivrājakaḥ sarvabhūtābhayadakṣiṇāṃ datvā pratiṣṭheta.* Vas 10.1.

[57] For an interesting comparison between the gift of safety given by a renouncer and that given by a king and warrior through conquest, see Hertha Krick, "Nārāyaṇabali und Opfertod," *Wiener Zeitschrift für die Kunde Südasiens*, XXI (1977), p. 111.

[58] On the role of gift giving in the Vedic ritual see J. C. Heesterman, "Reflections on the Significance of *Dakṣiṇā*," *Indo-Iranian Journal*, III (1959), pp. 241-258, and "Brahmin, Ritual and Renouncer," *Wiener Zeitschrift für die Kunde Südasiens*, VIII (1964), pp. 1-31. See also his interesting remarks on the *abhijit* and the *viśvajit* sacrifices and their relationship to ascetical modes of life, ibid., p. 25 f.

The candidate also deposits his sacred fires in his self (*agnisamāropa*) and from then lives without a fire. This rite was probably in the mind of Āp (2.21.10) when he called a renouncer *anagni* (man without a fire), which has remained a common epithet.[61] The prohibition against the use of fire symbolizes the renouncer's rejection of domestic life and ritual activities ; fire is the central element of Vedic rites and fire-cooking is an almost universal symbol of domestic life. Thus, renouncers are quoted by Proto-Bau (2.11.26) as saying: "Abandoning the rites taught in the Veda, cut off from both (worlds) we attach ourselves to the central sphere (Brahman)." The rejection of fire, however, is viewed in ritual terms as an internalization; it is given ritual expression in the rite of *agnisamāropa*.

---

[59] Cf. Yāj 2.175 ; N 4.4 ; K 640 ; Bṛ 15.3-4 ; Dakṣa 3.19-20.

[60] Cf. Viśveśvara Sarasvatī, *Yatidharmasaṃgraha* (Ānandāśrama Sanskrit Series, No. 60 ; Poona 1928), p. 17 ; Vāsudevāśrama, *Yatidharmaprakāśa*, ed. P. Olivelle (De Nobili Research Library, III ; Vienna 1976), 21.78.

[61] Cf. Bau 2.18.22 ; M 6.43 ; *Bhagavad-gītā*, 6.1.

Of all the *dharmaśāstras*, only the Deutero-Bau (2.17. 10-39) and the Vai (2.6-7) give us a detailed description of the renunciatory rite. P.V. Kane (op.cit., II, pp. 953-956) has given a full and faithful account of the rite according to the Deutero-Bau, to which I refer the reader. Here I intend to point out some discrepancies between that and the description given in the Vai. These discrepancies furnish us with valuable information on the early history of the rite.

According to both, the rite is spread over a period of two days. The Vai requires the candidate to perform a *prājāpatya* penance[62] on the first day. This requirement is found in all medieval accounts of the rite.[63] The Deutero-Bau, however, is silent on this point. The latter, on the other hand, mentions the rite of entry into *sāvitrī* (*sāvitrīpraveśa*) performed on the first day. It consists of reciting each quarter-verse (*pāda*) of the *sāvitrī* formula followed by the words "I enter *sāvitrī*" (*sāvitrīṃ praviśāmi*), and then the whole formula followed by the same words. The renouncer thus ritually expresses his rejection of all ritual formulæ (*mantra*) except the mystic syllable OṂ.[64] The Vai, on the other hand, merely instructs the candidate to recite the *sāvitrī* formula by quarter-verse, next by half-verse and finally the entire verse. This is done on the second day. The same rite is performed, according to the Vai (2.2), at the ceremony for becoming a hermit. The abandonment, therefore, of the *sāvitrī* formula even by the renouncer is not envisaged by the Vai. Thus after the bath that concludes the renunciatory rite the Vai (2.8) requires the new renouncer to recite the *sāvitrī* one thousand or one hundred times. According to the Vai, the *sāvitrī* is used also in taking possession of the begging-bowl.

---

[62] For a description of this penance see Gau 26.2-5; Bau 2.2.38; 4.5.6; Āp 1.27.7; Vas 21.20; M 11.212; Vi 46.10; Yāj 3.320.

[63] Cf. Viśveśvara Sarasvatī, *Yatidharmasaṃgraha*, ed. cit. pp. 6-8; Vāsudevāśrama, *Yatidharmaprakāśa*, ed. cit., 6.1-19.

[64] Cf. Vidyāraṇya, *Praṇavamīmāṃsā*, cited in Vāsudevāśrama's *Yatidharmaprakāśa*, ed. cit., 40.12

Both Deutero-Bau and the Vai agree that the sacrifice performed on the day of renunciation is offered to Agni Vaiśvānara. This goes against the prescriptions of Manu, Vi and Yāj mentioned earlier, according to which it is offered to Prajāpati. There probably existed a deep controversy on this point as indicated by the *Jābāla Upaniṣad* [4], which strongly condemns the latter view.

Medieval authors reckon that the essential element of the rite—that which makes the candidate a renouncer—is the recitation of the formula known as *praiṣa* : "I have renounced" *(saṃnyastaṃ mayā)*.[65] Deutero-Bau, however, does not term it *praiṣa*. The Vai is probably the first work to use this mysterious term to denote the renunciatory formula. In the vedic ritual *praiṣa* is the call or invitation made by one priest to another to commence an action or a recitation.[66] How that term came to be applied to the proclamation that one has renounced remains unclear.

According to the Vai, after reciting the *sāvitrī* formula but before depositing the fires in the self and reciting the *praiṣa* the candidate says : "I enter the mendicant *āśrama*" *(bhikṣāśramaṃ praviśāmi)*. Thereupon the author comments : "Thus he enters it" *iti taṃ praviśati)*, which can only mean that by reciting these words the candidate enters the renouncer's *āśrama*. According to the Vai, therefore, the actual moment of renunciation is when the candidate utters these words. The *praiṣa* is then a mere public proclamation of this new status.

---

[65] Cf. Viśveśvara Sarasvatī, op. cit., p. 18 ; Vāsudevāśrama, op. cit., 20.1-2.

[66] Cf. L. Renou, *Vocabulaire du Rituel Védique* (Paris : Librairie Klincksieck, 1954), p. 117.

Could this be the reason why the verb *saṃnyastaṃ* in the *praiṣa* formula is put in the past tense ?

Another difference in the two accounts is the point at which the gift of safety is given. According to Deutero-Bau, it is given immediately after reciting the *praiṣa,* while the Vai considers it the last element of the rite, coming after the *tarpaṇa* and the worship of the sun following the final bath.

Two points in the renunciatory rite created much controversy in the middle ages. The first is whether a renouncer discards the sacrificial thread *(yajñopavīta)* and shaves the top-knot *(śikhā)*. The second concerns the number of staffs a renouncer should carry—a single staff *(ekadaṇḍa)* or three staffs tied together (*tridaṇḍa* or *triviṣṭabdha*). This controversy was mainly between the Śaṃkarite renouncers and the followers of Rāmānuja. The former allowed a top-knot, a sacrificial thread and a triple staff to the two lower grades of renouncers, Kuṭīcakas and Bahūdakas. The highest class of renouncers the Paramahaṃsas, had neither a top-knot nor a sacrificial thread and carried a single staff. The followers of Rāmānuja saw not only the top-knot and the thread, but also the triple staff as obligatory on all renouncers. A bitter attack on the Śaṃkarite position is contained in Varadācārya's *Yatiliṅgasamarthana* and Vedānta Deśika's *Yatiliṅgabhedabhaṅgavāda.*[67]

Neither Deutero-Bau nor the Vai says anything about shaving the top-knot. According to Vas [10.6], a renouncer should be shaven-headed (*muṇḍa*), which implies the absence of a top-knot. Gau [3.22] gives the option of either keeping the top-knot or shaving it (*muṇḍaḥ śikhī vā*). The expression *śikhāmuṇḍaḥ* in Proto-Bau 2.11.18 can mean that he is shaven-headed except for the top-knot, the interpretation favoured by Govinda, or that he shaves his head including the top-knot. None of the *dharmaśāstras* prescribes the abandonment of the sacrificial thread.[68] The Vai [2.7], in fact, explicitly states that the new renouncer takes the girdle, the sacrificial thread, the black antelope skin and the upper dress in the same manner as at Vedic initiation.

---

[67] Ed. P. B. Anantacharya. Śāstramuktāvalī, Nos. 37-38; Conjeeveram 1911. The latter work is the 64th chapter of Vedānta Deśika's *Śatadūṣaṇī.*

THE STAFFS OF A RENOUNCER

As regards the number of staffs that a renouncer is required to carry, the dharmasūtras do not give us any information. Proto-Bau [2.11.23], however, states that a renouncer should not injure any creature with the three rods (*daṇḍa*), viz. words, thoughts and deeds. This allegorical use of the word *daṇḍa* is probably based on the three staffs (*daṇḍa*) of a renouncer. A somewhat different allegorization of the renouncer's triple staff occurs in Manu 12.10 : "That man is called triple-staffed (*tridaṇḍin*) in whose mind these are firmly fixed : control (i.e. discipline) over speech (*vāgdaṇḍa*), control over thoughts (*manodaṇḍa*) and control over body (*kāyadaṇḍa*)." Manu [9.296] also compares the seven constituent parts of a kingdom to the three staffs of a renouncer ; not a single one of them is dispensable, because each supports the others. Elsewhere Manu [6.52] refers to the renouncer as *daṇḍin*, which may mean a man who carries one or several staffs. Yāj [3.58], on the other hand, calls him *tridaṇḍin* (triple-staffed). In the description of the renunciatory rite Deutero-Bau uses the plural *yaṣṭayaḥ* (staffs) both while enumerating the items which the candidate has to procure [Bau 2.17.11] and while describing the final bath [Bau 2.17.37]. Describing the ceremonial taking of the staff [Bau 2.17.32], however, he uses the singular *daṇḍam*. The Vai, on the other hand, always uses the word *tridaṇḍa* (triple staff) in its description of the rite. The only specific reference to a single-staff (*ekadaṇḍa*) is found in Deutero-Bau at 2.17.45, where the renouncer is said to be either single-staffed or triple-staffed (*ekadaṇḍi tridaṇḍi vā*). Patañjali, speaking of the recognition of a thing through something with which it is invariably associated, gives the example of smoke and the triple staff through which one recognizes the presence of fire and a renouncer, respectively.[69] At the time of Patañjali [2nd cent. B.C.], therefore, the prevalent, if not invariable, practice among renouncers was to carry a triple staff.

---

[68] This requirement is found in several Saṃnyāsa Upaniṣads : *Kaṭhaśruti*, 2.3 ; *Aruṇi*, 2 ; *Jābāla*, 6.2 ; *Nāradaparivrājaka*, 3.78 ; *Parabrahma*, 6 ; *Paramahaṃsaparivrā aka*, 3 ; *Paramahaṃsa*, 1-2 ; *Brahma*, 6-12 ; *Yājñavalkya*, 3-4 ; *Saṃnyāsa*, 1.1. Against this view see *Saṭyāyanīya Upaniṣad*, 12.

We might assume that during the dharmaśāstric times it was left up to each renouncer to take a single or a triple staff. Accordingly, the terms *ekadaṇḍin* (single-staffed) and *tridaṇḍin* (triple-staffed) would merely have an etymological meaning. They would not be designations of certain types or classes of renouncers. There are two arguments against such a simple solution. In medieval India these two terms were used invariably to identify certain sects or categories of renouncers. They had acquired by that time a conventional meaning and are indicative of group affiliations.[70] *Tridaṇḍin* was either a Vaiṣṇava renouncer or one belonging to the first two classes of renouncers, i.e. Kuṭīcaka and Bahūdaka. *Ekadaṇḍin* meant either a Śaṃkarite *daśanāmin* renouncer or one belonging to the two upper classes of renouncers, i.e. Haṃsa and Paramahaṃsa. Without proof to the contrary, the presumption must be that this medieval use of the terms had a historical basis. The second difficulty with the above solution is why a person should tie three sticks together and carry it as a single staff. It is, to say the least, unnecessary and extraordinary. Both at Vedic initiation (*upanayana*) and at the consecration of the sacrificer (*dikṣā*) only a single staff is prescribed. The evidence suggests that there was an original difference between renouncers who carried a single staff, hence called *ekadaṇḍin*, and those who carried a triple strff, the *tridaṇḍins*, and that the use of three sticks bound together to form a single staff had some deeper ritual significance. The task of finding such an original distinction, however, is beset with difficulties, because the sources are obscure on this point.

---

[69] *Dhūmaṃ dṛṣṭvāgnir atreti gamyate triviṣṭabdhakaṃ dṛṣṭvā parivrājaka iti. viśama upanyāsaḥ. pratyakṣas tenāgnidhūmayor abhisaṃbandhaḥ kṛto bhavati triviṣṭabdhakaparivrājakayoś ca. sa tadvideśastham api dṛṣṭvā jānāty agnir atra parivrājako 'treti* Patañjali, *Mahābhāṣya* on Pāṇini 3.1.124; see also on Pāṇini 2.1.1.

[70] Similarly the term *maskarin* [cf. Paṇini 6.1.154] acquired a conventional meaning, viz. a renouncer, while retaining its etymological meaning, viz. 'man with a bamboo staff'.

> There are two orders of sannyāsīs, *Ekadaṇḍis*, who carry a single *daṇḍa*, rod, and *Tridaṇḍīs*, who carry a triple *daṇḍa*. These two names are found in the *Mahābhārata*, but no scholar, so far as the present writer knows, has ventured an opinion as to what the original distinction between them was.[71]

Commenting on these remarks by Farquhar, H.D. Sharma says :

> It is no wonder if Farquhar is in difficulty to find "the original distinction" between "*ekadaṇḍin*" and "*tridaṇḍin*". For, not only in the Mahābhārata, but even in the following [sic] works which have to be taken into consideration for deciding the question, there are contradictory injunctions prescribing one or three or none of the staves.[72]

Without pretending to have solved this thorny problem, I shall present a hypothesis which may at least indicate a direction in which future research may be undertaken. One characteristic feature of the renouncer's staff is that it is bamboo. Neither at initiation nor at the consecration of the sacrificer (*dīkṣā*) do we find the use of a bamboo staff.[73] The *dharma*-

---

[71] J. N. Farquhar, "The Organization of the Sannyāsīs of the Vedānta," *Journal of the Royal Asiatic Society*, 1925, p. 481.

[72] H. D. Sharma, op. cit., p. 36

[73] On the staff given at initiation see J. Gonda, "A Note on the Vedic Student's Staff," *Journal of the Oriental Institute*, Baroda, 14 (1964-65), pp. 262-272 ; reprinted in his *Selected Studies* (Leiden : E. J. Brill, 1975), IV, pp. 160-170. On the staff given to the consecrated sacrificer (*dīkṣita*),

śāstras and the *gṛhyasutras* mention another occasion at which a bamboo staff is given. At the ceremony that concludes the period of Vedic study (*samāvartana*), the young adult who has taken the ritual bath (*snātaka*) is given a *single* bamboo staff.[74] The Vai [2. 1-4] contains the only description we possess of the rite by which a man became a forest hermit. At the end of that rite the new hermit takes a *double* bamboo staff (*vaiṇavaṃ dvi-daṇḍaṃ*), i.e. two bamboo staffs tied together. Thus, a *snātaka* takes a single bamboo staff, a forest hermit takes a double bamboo staff and a renouncer a triple bamboo staff. It is extremely doubtful that this progressive increase in the number of staffs is a mere coincidence. The authors of these rituals were expressing some significant aspect of each rite through the number of staffs.

This conviction is strengthened by an examination of the ritual formulae used at these three rites. According to the *Vaikhānasa*-[2.15] and the *Hiraṇyakeśi*-[1.3.11.7] gṛhyasūtras, the ritual formula recited by the *snātaka* when he takes the single staff is : "On the impulse of god Savitṛ I take thee with the arms of the Aśvins, with the hands of Pūṣan" [cf. *Atharva Veda*, 19.51.2]. While taking the double staff the hermit recites two ritual formulae [Vai 2.3], the one given above and "My staff which fell down to the ground in the open air, that I take up again for the sake of long life, of holiness, of holy lustre."[75] According to the Vai [2.8], the renouncer while taking the triple staff recites the above two formulae as well as a third :

---

see *Kātyāyana-śrauta-sūtra*, 7.4.1-4 ; J. Gonda, *Change and Continuity in Indian Religions* (The Hague : Mouton, 1965), pp. 373-374.

[74] Cf. Bau 1.5.3 ; 2.6.7 ; Vas 12.37 ; M 4.36 ; Vi 71.13 ; Yāj 1.133. The gṛhyasūtras of Manu [1.2.15], Āśvalāyana [3.8.1] and Āpastamba [5.12.11] state simply that a *snātaka* should take a staff, without specifying that it should be bamboo, while those of Śāṅkhāyana [3.1.11]. Pāraskara [2.6.31], Khadira [3.1,26], Gobhila [3.4.27], Hiraṇyakeśin [1.3.11.7] and the *Vaikhānasa-gṛhyasūtra* [2.15] specify a bamboo staff.

[75] Some authorities prescribe this formula for initiation: cf. *Pāraskara-gṛhyasūtra*, 2.2.12.

"Friend, protect me." One is thus left with the impression that each bamboo staff is addressed with a special formula, the number of formulae increasing with the number of staffs taken. Further, a cumulative effect is created. The hermit does not merely take two staffs ; he takes one staff in addition to the *snātaka's* staft. Similarly, the renouncer takes a staff in addition to those of the *snātaka* and the hermit.

What is the significance of this progressive increase in the number of staffs ? I suggest that it is a symbolic expression of the revised *āśrama* theory. The custom of giving a staff cut from a sacred tree[76] to the initiated student and a bamboo staff to the *snātaka* is probably more ancient than the *āśrama* theory ; it is recorded in the *Brāhmaṇas* and the *gṛhyasūtras*. The bath that concludes the period of Vedic study is the beginning of a ritual process that ends with marriage and the assumption of family responsibilities. The bamboo staff thus signified this new state. The *āśrama* theory proposed alternative life styles to that of the householder. It is possible that the bamboo staff came to symbolize all these life-styles ; it indicated that the bearer was no longer a student but an adult. With the advent of the revised *āśrama* theory, namely that a man should pass from one *āśrama* to another, the number of bamboo staffs given at the entry to each adult *āśrama*, symbolized his progressive passage through them. Thus, one staff was given at the entry into the first adult *āśrama*, i.e. the householder's, two at the entry into the second, i.e. the hermit's, and three at the entry into the third, i.e. the renouncer's. This hypothesis is plausible also because the descriptions of the rites for becoming a hermit and a renouncer at which a double or a triple staff is given have come down to us in sources that have adopted the revised form (*samuccaya*) of the *aśrama* theory. It, moreover, indicates that by the time of Patañjali the revised version of the *āśrama* theory had eclipsed the original version. The rites of entry into the *āśramas* reflect the former, not the latter.

---

[76] Generally it is from a tree whose wood is used at the sacrifice [Gau 1.24]. *Palāśa* and *Bilva* are recommended for Brahmins, Banyan for Kṣatriyas and *Udumbara* for Vaiśyas [Āp 1.2.38 ; Gau 1.22-23]. The staff of a *dīkṣita* is of *Udumbara* wood.

We are, however, still faced with the problem of the single-staffed renouncer (*ekadaṇḍin*). Apparently such a renouncer takes a single bamboo staff at his renunciatory rite. How does he fit in the *āśrama* framework and why does he take only a single staff ? Again I venture to suggest the following hypothesis. In the original *āśrama* theory and even in certain variants of the revised version it was possible to renounce immediately after completing the Vedic studies. In that event the person renouncing has not gone through the second and third *āśramas*. Could it be, then, that a person renouncing at that stage took a single bamboo staff, in the same way as a person wishing to get married (*snātaka*) ? Three staffs would be inappropriate in his case because he has not gone through the second and third *āśramas*. Deutero-Bau [2.17.32] uses the singular *daṇḍaṃ* in describing the rite of taking the staff and enjoins only one ritual formula, viz. "Friend, protect me", (*sakhā mā gopāyeti daṇḍam ādatte*). This formula alone is given also in other works that prescribe a single staff.[77] This is the third formula of the Vai and the one peculiar to the renouncer. Thus we are given the impression that if all three staffs are taken, the *snātaka's* and the hermit's formulae are used together with the one proper to the renouncer, while if only one is taken then the latter alone is used. This tallies with our hypothesis that a person taking a single staff has not gone through the second and the third *āśrama* and, therefore, would not be entitled to use the formulae proper to these two.

If this hypothesis is accepted, we may inquire how this original distinction between *ekadaṇḍin* and *tridaṇḍin* is related to the later classification of renouncers on the basis of the single and the triple staff. We shall return to this problem in the next part of the paper.

---

[77] Cf. Vāsudevāśrama, op. cit., 18.6-8 ; 21.121-123 ; Viśveśvara Sarasvatī, op. cit., p. 17.

III

THE TERM 'SAṂNYĀSA' AND THE CLASSIFICATION OF RENOUNCERS

In medieval India the verb *saṃ-ny-√as* and its derivatives *saṃnyāsa* and *saṃnyāsin* were the terms most commonly used to designate the act of renouncing, the state of renunciation and a renouncer, respectively. Modern scholars have tacitly assumed that these terms had more or less an identical meaning in ancient India as well. At least, such an assumption, to my knowledge, has never been challenged.

Saṃ-ny-√as is not a common term in the Vedas and evidence suggests that it was comparatively new. The expression "*nūnaṃ taṃ navyaṃ saṃnyase*" is found in the *Jaiminīya Saṃhita* [2.7.3] of the *Sāma Veda*. It is repeated in the *Mahānāmnārcika* [8] of the *Kautuma Saṃhitā* and in the *Aitareya Āraṇyaka* [4.9]. The editors of the VVRI word index consider *saṃnyase* to be obscure.[78] Sāyaṇa, commenting on the *Mahānāmnārcika*, [8], and the *Aitareya Āraṇyaka*, [4.9], explains *saṃnyase* as "*samyañ nitarāṃ prakṣipāmi.*" Thus, the meaning probably is 'to hurl downward together.' The only other occurrence of the term in the Vedic *saṃhitās* is in the *Maitrāyaṇī Saṃhitā*, where it is given a more specific meaning : "*aṅgiraso vai svaryanto yatra mekhalāḥ saṃnasyaṃs tataḥ śaro jāyata*" [3.6.7]. According to this myth on the origin of the *śara* grass, which is used to make girdles, it first grew at the place where the Aṅgirases had cast off their girdles when they were about to go to heaven.[79] Here the term refers to the act of throwing down together certain objects no longer wanted and implies rejection or discarding.

In the *Brāhmaṇas* the term occurs only twice, both times in the *Śatapatha Brāhmaṇa*. The meaning and context in which it is used in the *Śatapatha* are almost identical to that in the *Maitrāyaṇī Saṃhitā*. (1) The seven sons of Aditi fashioned man out of the flesh of the aborted eighth son. In fashioning man some of the flesh was cut out. "The flesh that was cut off him and *thrown down in a lump* became the elephant" (*tasya yāni māṃsāni saṃkṛtya saṃnyāsus tato hastī samabhavat* : 3.1.3.4). (2) This story deals with the origin of *aśvavāla* grass. The sacrifice, assuming the shape of a horse, had escaped. The gods ran after it and caught its tail and tore it out. "Having torn it out they *threw it down in a lump* and from it arose these plants" (*tān ālupya sārdhaṃ saṃnyāsus tata etā oṣadhayaḥ samabhavan* : 3.4.1. 17). In these cases too the term is used with reference to discarding or throwing down an unwanted item.

---

[78] A. B. Keith also considers it an obscure word : cf. *Aitareyāraṇyaka* (Oxford 1909), p. 263, note 7.

[79] For another version of this myth, see *Taittirīya Saṃhitā*, 6.1.3.

In the *Śrautasūtras* the term is used a total of five times. In four of them it is used to indicate the discarding of unwanted items. The *Baudhāyana Śrautasūtra* [3.30], describing the *patnīsaṃyāja* offerings, says that blades of *darbha* grass are placed between the wife's thighs and arranged in a straight row from the *gārhapatya* fire to the *āhavanīya* fire. "And those that remain he *throws* on the bed of *kuśa* grass" (*atha yāni atiśiṣyante tāni barhiṣi saṃnyasyati*). Thus, what the sacrificer throws down or discards (*saṃnyasyati*) is the *darbha* grass no longer wanted. Similarly at 5.15 of the same text the Agnidha priests, after eating pieces of the libation, throw down (*saṃnyasyanti*) the remainder.[80] In the *Vaikhānasa Śrautasūtra* [9.9] what is thrown down (*saṃnyasyati*) is *lepa*, i.e. the particles or remnants wiped from the hand after eating.[81] The *Hiraṇyakeśi Śrautasūtra* [8.5.23] uses the word *saṃnyastāni* with reference to the instruments used to construct the altar, which instruments are thrown down together in a heap after its construction.[82]

---

[80] *upahūtāyām iḍāyām agnīdha ādadhāti ṣaḍavattaṃ nighreṇa bhakṣayitvā barhiṣi saṃnyasyanti. Baudhāyana-śrautasūtra*, 5.15.

[81] *tataḥ kiṃcid avaghrāya barhiṣi lepaṃ saṃnyasyati. Vaikhānasa-śrautasūtra*, 9.9.

[82] *spyaḥ svastir ity utkare vedikaraṇāni saṃnyastāni yathārūpam*

The term *saṃ-ny-√as* and its derivatives are used very rarely in early Sanskrit literature with reference to renunciation. In the classical Upaniṣads there is only one occurrence: the compound *saṃnyāsayoga* in the *Muṇḍaka Upaniṣad*, 3.2.6, which we shall presently examine. Neither Pāṇini nor Patañjali, both of whom use several terms for a renouncer,[83] mentions them. Even the *Amarakosa*, a much later work, which gives several synonymous terms for renouncer, including some rare ones such as *karmandin* and *pārāsarin*, does not mention *saṃnyāsin.*[84] Medieval lexicons also, possibly following Amarasiṃha, omit it.[85]

These terms are also rare in the dharmaśāstric literature, with which we are immediately concerned. *Saṃnyāsa* and *saṃnyāsin* are not used by Gau, Proto-Bau, Āp or Vas. The only occurrence of *saṃnyāsa* in Vi and Yāj is in an identical verse [Vi 22.91 ; Yāj 3.32], which is also found in Manu [5.108]. We shall examine this verse later. Manu uses *saṃnyāsa* at 1.114 and 6.96, and *vedasaṃnyāsika* at 6.86, but as we shall see, these terms are given a special meaning by him. The verb *saṃ-ny-√as* is used for the first time by Vas [10.4]. Manu uses it three

---

Hiraṇyakeśi-śrautasūtra, 8.5.23. The only occurrence where the term does not seem to imply rejection is: *āhṛtya samidha āgnīdhrīye saṃnyasyanti. Baudhāyana-śrautasūtra*, 5.16.

[83] *parivrājaka, śramaṇa, bhikṣu, yati, maskarin:* Pāṇini, *Aṣṭādhyāyī*, 4.3.110 ; 6.1.154 ; Patañjali, *Mahābhāṣya* on Pāṇini 1.1.39 ; 2.1.1 ; 2.4.12 ; 3.2.14, 124 125 ; 4.2.66 ; 5.1.74, 113 ; 6.1.13, 154.

[84] *bhikṣuḥ parivrāṭ karmandī pārāśary api maskarī / tapasvī tāpasaḥ pārikākṣī vācaṃyamo muniḥ // Amarakośa*, ed. V. Jhalakikar (Bombay 1896), 2.7.42. *Karmandin* and *pārāśarin* refer to the followers of the *bhikṣusūtras* of Karmanda and Pārāśarya, respectively: cf. Pāṇini, 4.3.110-111.

[85] Yādavaprakāśa, *Vaijayantī, brāhmaṇādhyāya*, 160: *yatiḥ pārāśarī bhikṣuḥ parivrāṭ pārarakṣikaḥ / anāśakī pravrajitaḥ karmandī maskarī yatī //* Yādava [*brāhmaṇādhyāya*, 144], however, as well as Halāyudha [*Abhidhānaratnamālā*, 4.75] give '*saṃnyāsa*' as a synonym of '*upavāsa*' (fasting). Halāyudha [*Abhidhānaratnamālā*, 2.254]: *pārāśarī vratī bhikṣur maskarī pārirakṣitaḥ / parivrājikas tapasvī karmandī tāpasaḥ smṛtaḥ //*

times [M 6.94,95,96]. In none of these usages does it indicate the act by which a man becomes a renouncer. It is only in Deutero-Bau and Vai, which are admittedly late works, that all these terms are used regularly and without any qualification with reference to renunciation.

The foregoing evidence, I feel, permits us at least to conclude that *saṃ-ny-√as* and its derivatives were not common terms to designate renunciation during the period of the classical *dharmaśāstras* and that they entered the vocabulary rather late. It is, therefore, worthwhile to study the early usages of these terms in the hope that it will throw some light on the history of renunciation.

In its early usage within the context of renunciation, the verb *saṃ-ny-√as* and its nominal derivatives by and large retain the meaning given them in the *Maitrayaṇī Saṃhitā*, the *Śatapatha Brāhmaṇa* and the *Śrautasūtras*, viz. discarding or rejecting. The objects that are discarded, however, are always ritual acts (*karman*). Thus in Vas [10.4] we read : *saṃnyaset sarvakarmāṇi vedam ekam na saṃnyaset* (Let him discard all rites, but the Veda alone let him never discard). In the vast majority of the cases in which they are used in the *Bhagavadgītā*, the reference to ritual activities is explicit :

3.30 : *mayi sarvāṇi karmāṇi saṃnyasya* (Abandoning all rites in me).

5.1 : *saṃnyāsaṃ karmaṇām* (The discarding of rites).

5.13 : *sarvakarmāṇi manasā saṃnyasya* (Mentally discarding all rites).

12.6 : *ye tu sarvāṇi karmāṇi mayi saṃnyasya* (But those who abandon all rites in me).

18.57 : *cetasā sarvakarmāṇi mayi saṃnyasya* (Mentally abandoning all rites in me).

The path to liberation through the abandonment of all rites and the accompanying search for knowledge is called *saṃnyāsayoga* in the *Bhagavadgītā*. It is contrasted with the path that calls for the performance of rites (*karmayoga*).[86] It is probably in this sense that *samnyasāyoga* is used in the *Muṇḍaka Upaniṣad*, 3.2.6 : *saṃnyāsayogād yatayaḥ śuddhasattvāḥ* (*Yatis* purified through the practice of *sanṃyāsa*). The very juxtaposition of *yati* (renouncer) and *saṃnyāsa* suggests that *samnyāsa* is a discipline or practice undertaken by a *yati* and not synonymous with a *yati's* state of life.

---

[86] Cf. *Bhagavadgītā*, 5.1-2,

In these usages, the verb *sam-ny-√as* and the noun *sāmnyāsa* refer only to one limited, though in the eyes of ritual Brāhmaṇism quite important, aspect of renunciation, namely the abandonment of ritual activity. They are not used either to indicate the act by which a man becomes a renouncer or as a label for the state of renunciation as such. This is probably the reason why Amarasiṃha did hot consider *saṃnyāsin* as a synonym of *bhikṣu* or *pravrajita*. The act of becoming a renouncer is indicated in the early texts by a verb indicating the renouncer's departure from home : *pra-√*vraj [Bau 2.11.16 ; Āp 2.21.8 ; M 6.34,38,39 ; Vi 6.27 ; N 13.25] ; *pra-√sthā* [Vas 10.1].[87] *Pari-√vraj* (to wander) is used to indicate both the act of renouncing [M 6.33] and the life of renunciation [M 6 41,85 ; Yāj 3.58]. Derivatives of both these verbs, viz. *pravrajita* and *parivrājaka*, are the most common terms for a renouncer. Only three other words, the one, *bhikṣu* (mendicant), indicating another important feature of renunciation, and the other two, *muni* and *yati*, borrowed from the ancient Vedic vocabulary, are used regularly for a renouncer.[88].

---

[87] In Pāli literature the word commonly used for the act of renunciation is *pabbajati*. The emphasis in Buddhism is on the departure from home and the adopting of a homeless life : *agārasmā anagāriyaṃ pabbajati*. Cf. *Dīgha Nikāya*, xvi, 5,30. The rite by which a man adopts this life is called *pabbajjā* (Sk. *pravrajyā*).

[88] For tbe occurrences of these terms in the dharmaśāstras see above fn. 2. For Pāṇini's and Patañjali's use of them see fn. 83. The terms *muni* and *yati* are used in the *Rg-veda* with reference to two classes of holy men, but the exact meaning of the terms remaius obscure : *muni* : Rv 7.56.8 ; 8.17.14 ; 10.136 ; *yati* : Rv 7.13.1 ; 8.3.9 ; 8.6.18 ; 10.72.7.

SAṂNYĀSA IN MANU

An important stage in the semantic history of the term *saṃnyāsa* is revealed in Manu. Manu regularly refers to the renouncer's *āśrama* as *mokṣa*. This usage was no doubt influenced by the fact that the *raison d'être* of renunciation was thought to be the search for liberation. Yet Manu uses the term in a very specific sense to mean the renouncer's state of life. He states that 'one should set one's mind on *mokṣa* (*mano mokṣe niveśayet* : 6.35, 35) after paying the three debts, and argues against "resorting to *mokṣa*" (*mokṣam sevamānaḥ* : 6.35) and "wanting mokṣa (*mokṣam icchan* : 6.37) before paying them. In these instances *mokṣa* does not mean simply liberation, for there is nothing to prevent one from aspiring to liberation or even actively seeking it before one has paid the three debts. It means specifically the state of renunciation (*pravrajyā* or *pārivrājya*), which should not be desired by one not freed from debt. This is demonstrated by his description of the *mukta*, i. e. one who has reached *mokṣa* :

> A potsherd (for a bowl), roots of trees (for lodgings), a worn-out garment, solitude and impartiality toward all beings : these are the characteristics of a *mukta*. [M 6.44]

Now, *mukta* in this context can only mean a renouncer ; the description hardly fits a person who has attained liberation—the *jīvanmukta* of the liberation philosophies. It is not surprising, therefore, that while enumerating the topics discussed in his book Manu refers to renunciation, dealt with in chapter six, as *mokṣa* [1.114].

It is, however, significant that in the same list of topics immediately after *mokṣa* Manu enumerates *saṃnyāsa* [1 114]. Commentators as well as modern scholars tend to assume that Manu intended these terms to be synonymous, or that he at least refers to the same subject matter by both terms.[89] This interpretation is shown to be erroneous by a careful examination of the relevant section of Manu. The disscussion of renunciation begins at 6.33. At 6.86 Manu states :

---

[89] Bühler translates them as: "(the manner of gaining) final emancipation and (of) renouncing the world." Thus '*mokṣa*', for Bühler, does not mean renunciation. This is confirmed by his translation of M 6.35, 36, 37, 44. Bühler follows the commentators, who had misunderstood Manu's

eṣa dharmo 'nuśiṣṭo vo yatīnāṃ niyatātmanām |
vedasaṃnyāsikānāṃ tu karmayogaṃ nibodhata ||

Thus the *dharma* of self-restrained renouncers has been explained to you ; listen now to the *karmayoga* of *vedasaṃnyāsikas.*

Now, this is a standard expression used by Manu to indicate the transition from one topic to another.[90] Thus there are two subjects treated here, the *dharma* of renouncers (*yatīnāṃ dharmaḥ*) from 6.33 to 6.85 and the *karmayoga* of *vedasaṃnyāsikas* from 6.86 to 6.96. These two correspond to *mokṣa* and *saṃnyāsa* of the list of topics [1.114], respectively. Our interpretation is confirmed by the fact that in the section on *mokṣa* consisting of fifty-three verses the verb *saṃ-ny-√as* and the noun *saṃnyāsa* are not used at all, whereas in the second section consisting of eleven verses they are used no less than five times. Further, the word *mokṣa* and the traditional words for a renouncer, such as *pravrajita, parivrājaka, bhikṣu* and *yati*, are absent in the latter section.

Thus, for Manu *saṃnyāsa* is a life-style different from normal renunciation, which he names *mokṣa.* He calls a person who follows the former life-style *vedasaṃnyāsika* and uses the

---

intentions. Govindarāja takes them to refer to the same state : *bhikṣoḥ saṃsārahetutvān mokṣaḥ saṃnyāsaś ca bhikṣudarmaprakāra eva.* Kullūka takes *mokṣa* to be the '*dharma* of renouncers', but equates it with *saṃnyāsa* : *mokṣahetutvān mokṣaṃ yatidharmam | yatidharmatve 'pi saṃnyāsasya pṛthagupadeśaḥ prādhānyajñāpanārthaḥ ||* This interpretation is repeated almost verbatim by Rāghavānanda. Sarvajñanārāyaṇa also equates the two : *mokṣaṃ mokṣahetukarmasaṃnyāsaṃ karmaphalatyāgam.*

[90] Cf. M 2.25 ; 5.146 ; 6.97 ; 9.103, 220, 325, 336 ; 10.131 ; 12.82, 107. A few examples will illustrate my point : *eṣa vo 'bhihito dharmo brāhmaṇasya caturvidhaḥ| puṇyo 'kṣayaphalaḥ pretya rājñāṃ dharmaṃ nibodhata||* M 6.97. *eṣa sarvaḥ samuddiṣṭaḥ karmaṇāṃ vaḥ phalodayaḥ|naiḥśreyasakaraṃ karma viprasyedaṃ nibodhata ||* M 12.82.

verb *saṃ-ny-√as* to indicate the act by which one adopts that life-style. What, however, is *saṃnyāsa* and how is it different from normal renunciation ?

After introducing the topic of *saṃnyāsa* at 6.86, Manu devotes the next two verses [6.87-88] to stating that all four *āśramas* assumed successively lead a man to the highest state (*nayanti paramāṃ gatiṃ*). Then he introduces a rider : it is not necessary to go through them all to reach that state. In verses 6. 89-90 he praises the householder's *āśrama* as the highest and the best. Everyone, irrespective of one's *āśrama*, should observe the *dharma* consisting of ten points : contentment, forgiveness, self-control, not stealing, purification, control of senses, wisdom, knowledge, truthfulness and abstention from anger [6. 91-92]. Those who study this tenfold *dharma* and live according to it attain the highest state *(yānti paramāṃ gatim* : 6.93*)*. The point Manu wants to make is clear : it is not necessary to become a renouncer to attain liberation. Even a householder who follows the tenfold *dharma* can be liberated. It is within this context that Manu speaks of *saṃnyāsa* as an alternative to renunciation *(mokṣa)*.

Following the tenfold *dharma*, a twice-born may 'abandon' *(saṃnyaset)* after paying the three debts and learning the Upaniṣads [6.94]. What he 'abandons' is made clear in the next two verses [6. 95-96], where we find the expressions '*saṃnyasya sarvakarmāṇi*' (having abandoned all rites) and *saṃnyasya karmāṇi*' (having abandoned rites.) Here Manu is continuing the tradition of the earlier texts examined above where the word is used principally with reference to ritual acts. The *vedasaṃnyāsika*, therefore, gives up all ritual activity. In this he is no different from a regular renouncer. Unlike the latter, however, he neither leaves home *(pravrajati)* nor wanders *(parivrajati)* nor begs his food in the proper sense of the word. He lives at ease under the protection of his son *(putraiśvarye sukhaṃ vaset :* 6.95*)*. It is not said whether he lives on his own in a hut or in his son's house, but the former is more likely [cf. Bau 3.1.17]. In his concluding statement [6.96], Manu states that such a person destroys his sins by *saṃnyāsa*,[91] and attains the highest state *(prāpnoti paramāṃ gatiṃ)*. This refrain repeated three time in nine verses shows that Manu was attempting to demonstrate that *saṃnyāsa* was an alternative not inferior to *mokṣa*.

We can now see that the terms *pra-√vraj*, *pari-√vraj*, *pravrajita* and *parivrājaka* were inappropriate with regard to such a person. Only if we see his acceptance of food from his son as begging can he be called a *bhikṣu*. Thus, the first technical use of the word *saṃnyāsa* refers to the life of an old person who in the twilight of his life abandons all ritual activities and family responsibilities, depends on his son to provide him with his bare necessities, and devotes himself to the practice of the ten virtues contained in the 'tenfold *dharma*' and to the study of the Veda. Such a person is called by Manu *vedasaṃnyāsika*. He occupies an intermediate position between the householder and the renouncer. He is not a householder because he does not perform rites or shoulder family responsibilities ; he is not a renouncer because he does not wander homeless.

Manu contrasts the *karmayoga* of a *vedasaṃnyāsika* [6.86] with the *dhyānayoga* of the renouncer to which he devotes a large section [6. 72-82]. *Dhyāna* (meditation) is given as only one step of the yogic path ; besides it Manu mentions *prāṇāyāma* (breath control), *dhāraṇā* (concentration) and *pratyāhāra* (withdrawal of senses), all elements of the eightfold path of classical Yoga [cf. M 6. 70-72]. Thus *karmayoga* is different from the meditative techniques of Yoga cultivated by regular renouncers. Manu does not clearly define the *karmayoga* of *vedasaṃnyāsikas*, but he gives the impression that it consists of observing the ten virtues of the 'tenfold *dharma*' and the study of the Veda, a meaning similar to that of *yoga* in Āp which we have already discussed.

---

[91] In the light of the belief that '*saṃnyāsa*' destroys sins [*saṃnyāsenāpahatyainaḥ*] we can understand the assertion in Manu 5.108 that '*saṃnyāsa*' is the purificant of Brahmins, as the current is that of a river and the monthly period that of a woman. The same verse occurs in Vi 22.91 and a similar verse is found in Yāj 3.32. In these contexts too '*saṃnyāsa*' means the giving up of ritual activity and dedicating oneself to holiness during the twilight of one's life.

Manu implicity refers to this *saṃnyāsa* also at the conclusion of his discussion on the householder :

> When he has paid, according to the law, his debts to the great sages, to the manes and to the gods, let him make over everything to his son and dwell (in his house), not caring for worldly concerns.
>
> Alone let him mediate in solitude on that which is salutary for his soul ; for he who mediates in solitude attains supreme bliss. [M 4. 257-258].

For Manu, therefore, every householder should ideally seek to end his days in this manner, even though he may not be able to become a regular renouncer.

A very similar state is referred to by Yāj at the conclusion of his discussion on renunciation. After describing renunciation which leads to liberation, he states : "Or even a man who has abandoned all rites, moderately eats food received unasked and lives in the forest studying the Veda, can attain the highest perfection (*parāṃ siddhim avāpnuyāt*)" [3.204].

THE CLASSIFICATION OF RENOUNCES

The Vai [1.9] and the *Mahābhārata*[92] give a fourfold classification of renouncers : Kuṭīcaka, Bahūdaka, Haṃsa and Paramahaṃsa. It has remained the basic classification in all later Sanskrit literature, although a few other classes are mentioned in the *Saṃnyāsa Upaniṣads.*[93] None of these classes is mentioned in any classical *dharmaśā tra* besides the Vai. Even Deutero-Bau, who gives classifications of householders [3. 1-2] and forest hermits [3.3], is silent on this point.

To my knowledge no modern scholar has studied the origin of these four types of renouncers. Although in medieval times this classification had only a theoretical value—most renouncers called themselves Paramahaṃsas[94]—it is safe to assume that real differences among early Brāhmaṇical renouncers must have served as its basis. The above study of the *āśrama* theory, the rite of renunciation and Manu's conception of *saṃnyāsa* permits us to offer a hypothesis regarding its origin. I insist that this is only a hypothesis ; it may, however, throw some light on the problem and point out areas for further research.

---

[92] Cf. *Anuśāsanaparvan*, 129.29.

[93] Cf. H. D. Sharma, op. cit., pp. 30-33.

In my opinion the *vedasaṃnyāsika* of Manu served as the basis for the Kuṭīcaka (also spelt Kuṭīcara). The two distinctive features of a Kuṭīcaka are that, A) he lives in a hut (*kuṭī*) and, therefore, does not wander from place to place homeless as regular renouncers are wont to do ; B) he receives food from his son and other close relatives.[95] This is the closest he comes to the regular renouncer's practice of mendicancy. Both these features fit well with what Manu says about the *vedasaṃnyāsika*. My interpretation is supported by Kullūka (on M 6.86), who takes the latter term to mean a Kuṭīcaka.

A Bahūdaka has all the characteristics of a regular renouncer. He begs his food a little at a time from at least seven houses and does not live in a hut of his own but wanders homeless. He has, however, one feature in common with a Kuṭīcaka: both carry a triple staff (*tridaṇḍa*). He is thus distinguished from a Haṃsa and a Paramahaṃsa, who carry a single staff (*ekadaṇḍa*). We have seen that the triple staff was given when a renouncer had gone through all three adult *āśramas*. Accordingly, we can identify the original Bahūdaka as one who has become a renouncer after going through the *āśramas* of householder and hermit, in keeping with the revised *āśrama* theory. He is the normal renouncer (*yati*) in Manu, Vi and Yāj.

One may ask why a Kuṭīcaka also should carry a triple staff, because he has not gone through the hermit's *āśrama*. The answer may be that already by the time of Manu the hermit's mode of life had become obsolete, although it was maintained in theory within the *āśrama* framework.[96] The rite of renunciation also shows that generally people renounced while they were still at home. Consequently, the triple staff would have been taken by anyone who renounced as a householder after paying the three debts. As the payment of these debts was considered the main obligation, through some sort of a legal fiction such a person may have been thought to have passed through all *āśramas,* although in fact he did not become a hermit. Thus, after paying the triple debt a householder would be able either to become a renouncer of the classical type—wandering, begging etc.—or to accept a modified version of that life-style, i.e., stay in a hut under the protection of his son. These are the Bahūdaka and the Kuṭicaka classes of renouncers, respectively, both of whom carry a triple staff.

---

[94] Cf. Vāsudevāśrama, *Yatidharmaprakāśa*, ed. P. Olivelle (De Nobili Research Library, IV ; Vienna 1977), Part II, Translation, Introduction pp. 34-37.

[95] Cf. *Sūtasaṃhitā* of the *Skanda Purāṇa*, 2.6.3.

Haṃsa is the third class of renouncer. He is distinguished from the first two principally by the fact that he carries a single staff (*ekadaṇḍa*). We saw earlier that a man who becomes a renouncer immediately after Vedic studies takes a single bamboo staff, just as a *snātaka.* Such a man, who renounced in his youth without ever caring for worldly pursuits, may have served as the basis for the Haṃsa class. Renouncers who were never married and had always been celibate were bound to be considered superior to those who had led worldly lives and became celibates in their old age. Besides, men who had spent their entire lives as renouncers in the pursuit of wisdom and knowledge must have been considered holier and more advanced in the path to liberation than those who renounced in their old age. It is thus not surprising that Haṃsas are considered superior to Kuṭīcakas and Bahūdakas, and that *ekadaṇ-*

---

[96] "To the original triad of chaste Veda student, householder, forest-dweller, a fourth stage, asceticism was in course of time added, ultimately replacing the forest-dweller stage in function, although this was maintained in theory." J. Gonda, *Triads in the Veda* (Amsterdam: North-Holland Publishing Co. 1976), p. 123.

ḍins, at least in some quarters, are considered superior to *tridaṇḍins*.

The fourth class, Paramahaṃsa, is only a variant of the third. The very term *parama* (highest) indicates that Paramahaṃsas were a superior type of Haṃsas rather than a radically different class. Their difference is only one of degree. Paramahaṃsas give up many customs of Haṃsas, e.g. wearing a sacrificial thread and a top-knot. This indicates a gradual advance in the path of renunciation. Thus, some Paramahaṃsas give up even the single staff and the begging-bowl normally carried by Paramahaṃsas.[97] Some use only their hands as begging-bowls and others only their stomachs, i.e., they eat like cows from the ground.[98] Once renunciation was viewed as admitting gradation and the first three classes of renouncers as forming an ascending hierarchy, it was but natural to add ever higher types of renouncers. Thus the *Nāradaparivrājaka Upaniṣad* [5 11-17], after listing the four traditional classes, adds Turiyātīta (one gone beyond the fourth class) and Avadhūta as types superior even to Paramahaṃsas.

It is evident that when these later classes were added the origin of the first three classes was lost sight of. The theoreticians paid attention only to the differences in their life-styles and emphasised the superiority of each succeeding type. Consequently, these classes, like the *āśramas* themselves, were viewed as rungs of a ladder that one must climb. Thus each superior class is defined by the abandonment of what characterises the class just below it.[99] It is, therefore, possible to pass from one class to another. On the other hand, the differences in life-style was thought to be based on the gradation of their detachment (*vairāgya*).[100] Consequently, a man could directly become a Paramahaṃsa and an *ekadaṇḍin* even after marriage, provided he had the necessary detachment.

---

[97] Cf. *Paramahaṃsa Upaniṣad*, 1-2, and Vidyāraṇya's commentary on it in his *Jīvanmuktiviveka* (Ānandāśrama Sanskrit Series, No. 20; Poona 1916), pp. 361-382.

[98] Such renouncers are called *pāṇipātrin* and *udarapātrin*, and special rules govern their behaviour: cf. Vāsudevāśrama, op. cit., 57.32-92.

[99] Cf. P. Olivelle, "A Definition of World Renunciation," ed. cit., pp. 82-83.

This classification of renouncers shows that at a time not far removed from Manu a wide variety of life-styles came to be regarded as renunciation. The obsolescence of the hermit may have contributed to bringing all forms of 'religious' or 'holy' life-styles under the umbrella of renunciation. The new word *saṃnyāsa* no doubt helped it. The etymologies of the older words for renunciation—*pravrajyā*, *pārivrājya*—prevented their application to such a variety of life-styles. *Saṃnyāsa*, on the other hand, indicates a 'giving up', an 'abandonment'. All holy life-styles we have examined involve abandoning some aspect of normal human existence, especially ritual activity. Thus, it was well suited to express this new and broader view of renunciation. *Saṃnyāsa* and *saṃnyāsin* thus came to replace the older words as the most common terms for renunciation and renouncer, respectively.

IV

RENUNCIATION AND HINDU LAW

Although separated from worldly ties and concerns, renouncers all the same lived among men and came into contact with society. This gave rise to a set of rules that regulated the intercourse between renouncers and society and thereby defined their social position.

---

[100] "Detachment, it is declared, is twofold : intense and extremely intense. When there is intense detachment, an ascetic should become a Kuṭīcaka renouncer ; a strong person should become a Bahūdaka renouncer. When there is extremely intense detachment one should become a Haṃsa renouncer ; one who desires release should become a Paramahaṃsa renouncer—it is the means of attaining knowledge immediately." Vidyāraṇya, *Jīvanmuktiviveka*, ed. cit., pp. 9-12. Vāsudevāśrama [op. cit., 4.113-114] states : "It should be noted here that, although the four classes of renouncers, Kuṭīcaka et seq., are all equal with respect to the possession of a staff, a loin-cloth and a garment, the begging of food and other such customs, nevertheless, they are distinguished by reason of their divergent life-styles resulting from the gradation of their detachment."

The total withdrawal from society resulting from renunciation came to be viewed increasingly in terms of death. The renouncer's separation from social ties was as total and as final as that caused by death. The belief in the mystical death of the renouncer had far-reaching consequences in the area of religious practice. Its effect was felt even in the area of law ; Hindu jurisprudence viewed renunciation as a civil death. This general principle guided its treatment of the renouncer.

The most radical consequence of a renouncer's civil death is his inability to enter into a contract or to transact any business that is legally binding. Kauṭilya [Artha 3.1.12] is most explicit on this point : "Legal transactions (*vyavahāra*) cannot be concluded by dependents and renouncers (*pravrajita*)." As, on the one hand, civil death disqualifies him from future transactions, so, on the other, it releases him from contracts he had previously entered into.

The most important of contracts so dissolved is his marriage. Renunciation of the husband is one of the three causes generally recognized as dissolving a marriage,[101] the other two being his prolonged absence in a distant land and his physical death. While renunciation results in civil death, a prolonged absence was probably seen as creating a presumption of death.[102] A related question is whether a wife who is thus released *a vinculo*

---

[101] A similar provision existed in the Catholic Church. According to Canon Law a non-consummated marriage is dissolved *ipso facto* when the husband enters 'religion' i.e. takes the vows of monastic life. But in the Indian case consummation is irrelevant. Cf. A. S. Mervyn Fernando, *The Dissolution of a Non-Consummate marriage by solemn Religious Profession*, Freiburg im Breisgau, 1964.

[102] How long one has to be away before death is presumed has been a matter of controversy, especially because this presumption was linked to the possibility of remarriage of the wife *or niyoga*. Gau [18.15] gives six years as the length of absence, while others adjust the length according to the caste of the absentee : cf. Vas 17.75-78 ; M 9.76 ; N 12.98-100 ; P. V. Kane, op. cit., II, pp. 608-623.

matrimonii can also remarry. The most liberal view is expressed by Kauṭilya :

> The wife of a man who has been away for a long time in a distant land, or has become a renouncer (*pravrajita*), or is dead shall wait for seven menstrual periods, for one year if she has borne children. After that she may [103] approach (for marriage) a full brother of the husband. [Artha 3.4.37-38]

Gau is the only author to make a distinction between the wife of a man who has gone away and the wife of a man who has renounced. He allows remarriage for the former [Gau 18.15] but not for the latter [Gau 18.16]. Both Vas [17.75-78] and Manu [9.76] allow the wife of a man gone abroad for a long time to remarry, but do not mention the case of a renouncer's wife. Nārada, on the other hand, gives five occasions when a wife may remarry : when the husband is lost or dead, has renounced, is impotent, or has fallen from his caste. [104] The trend, however, in the dharmaśāstric tradition is to disallow the remarriage of women.[105] Medieval legal digests, therefore, interpret the above passage of Nārada as referring to a practice of a previous age (*yuga*), which should not be followed in the present Kali age.[106]

The principle of the renouncer's civil death is applied to two other important areas : partition of property and debt. When a man becomes a renouncer his property is subject to partition among his heirs.[107] An allusion to it is found already in the *Bṛhadāraṇyaka Upaniṣad* [2.4.1] where Yājñavalkya prior to 'going forth from home' desires to make a settlement between his two wives. Gau [28.2] allows the father to divide his property when the mother is past child-bearing age. Nārada [13.4] allows a father who is very old to distribute his property at will among his sons. According to him it is also possible for the sons to partition the property among themselves either when the father is dead [N 13.2] or when the mother has ceased to menstruate, the sisters are married, and the father has turned away from sexual desires and worldly pursuits [N 13.3]. The latter condition is interpreted by Śūlapāṇi on Yāj 2. 114 as referring to the renunciation of the father. This is probably right, for at 13.25 Nārada states that the property of a man who, being childless, dies or renounces (*pravrajet*) is divided among his brothers.[108] Manu [9.104] states that the brothers should divide the inheritance after the passing of the father and mother (*ūrdhvaṃ pituś ca mātuś ca*). Rāghavānanda, commenting on this passage, takes the term *ūrdhvaṃ* to designate implicitly (*upalakṣaṇa*) also the renunciation (*pravrajyā*) of the parents. Consequently, when a person renounces there are two ways in which his property can be partitioned. He can divide his property himself before renouncing. This course is recommended in the *Kuṇḍikā Upaniṣad*, 3. If, however, he renounces without doing so he loses all rights with regard to his property and his heirs can partition the property among themselves, just as if the father were dead.

---

[103] It is true that Kauṭilya [Artha 3.3.19] rules out divorce in the case of the first four types of marriage, viz. *brāhma*, *prājāpatya*, *ārṣa* and *daiva*. This prohibition, however, most probably is directed against divorce by mutual consent, spoken of immediately before at Artha 3.3.15-18.

[104] *naṣṭe mṛte pravrajite klībe ca patite patau / pañcasv āpatsu nārīṇāṃ patir anyo vidhīyate* // N 12.97 ; cf. Parāśara, 4.30 ; *Agnipurāṇa*, 154.5-6.

[105] Cf. Āp 2.11.13-14 ; M 5.156-160 ; 9.46-47, 65 ; K 837, 924-926 ; Vi 25.14. "The theory of dharmaśāstra writers is that marriage when completed by homa and saptapadī is indissoluble." P. V. Kane, op. cit., II, p. 619.

[106] Cf. P. V. Kane, op. cit., II, p. 619.

The civil death of the renouncer makes him incapable of owning property. The property he owned prior to renunciation goes to his legitimate heirs. After renunciation he can no longer inherit any property. This is explicitly stated by Vas [17.52] : sons who have gone to another *āśrama*, i. e. to an

---

107. "It is before the stage of hermit or ascetic, i.e. in the lifetime of the father, that family property should be divided among sons, according to the theory of the four *āśramas*." R. Lingat, op. cit., p. 58.

108. On the time for partition see Vijñāneśvara on Yāj 2.115.

āśrama different from that of the householder, do not inherit paternal wealth (*anaṃśās tv āśramāntaragatāḥ*). Vṛddha-Hārīta [7.259] excludes the following from a share of the inheritance: brothers who are hermits, renouncers, perpetual students, heretics, sinners and those who do not perform Vedic rites.[109]

In spite of his life of poverty, a renouncer possesses certain essential items, such as clothes and a begging-bowl. There are explicit rules regarding who is to inherit these when he dies. These rules generally deal with all three *āśramas* that are celibate and given to poverty: perpetual student, hermit and renouncer. Yāj states:

> The heirs of a hermit, of a renouncer and of a perpetual student are, in that order, the teacher, the virtuous pupil and the spiritual brother and associate in holiness.[110]

Vijñāneśvara, commenting on this passage, as well as the *Sarasvatīvilāsa*,[111] Mādhava,[112] the *Vivādaratnākara*,[113] the *Vivādacintāmaṇi*,[114] the *Vīramitrodaya*,[115] and the *Madanapārijāta*,[116] interpret 'in that order' (*krameṇa*) to mean 'in the inverse order' (*pratilomakrameṇa*). Thus the heir of a hermit is his spiritual brother or associate in holiness, that of a renouncer is a virtuous pupil, and that of a student is the teacher. According to the *Smṛticandrikā*,[117] however, the teacher, the virtuous pupil, the spiritual brother and the associate in holiness are all heirs of hermits, renouncers and perpetual students. The term 'in order' *(krameṇa)* means that each succeeding one inherits only in the absence of each preceding. The interpretation of *krameṇa* to mean 'in the inverse order' *(pratilomakrameṇa)* is farfetched. Kauṭilya also gives the same rule : "Of forest hermits, renouncers and students of the Veda, the inheritors of property are the teacher, pupil, the spiritual brother and the fellow student, respectively *(krameṇa)*."[118] Even if Yāj used *krameṇa* to mean *pratilomakrameṇa* due to the exigencies of metre, Kauṭilya, writing in prose, had no such restriction. Moreover, Viṣṇu states explicitly that the property of a hermit is inherited by the teacher or the pupil.[119]

---

[109] *naiva bhāgaṃ vanasthānāṃ yatīnāṃ brahmacāriṇāṃ/pāṣaṇḍapatitānāṃ ca na ca vaidikakarmaṇām* // Vṛddha-Hārīta, 7.259.

[110] *vānaprasthayatibrahmacāriṇāṃ rikthabhāginaḥ / krameṇācāryasacchiṣyadharmabhrātrekatīrthinaḥ* // Yāj 2.137.

[111] Cf. *A Complete Collection of Hindu Law Books on Inheritance*, ed. S. S. Setlur (Madras 1911), I, pp. 185-186.

[112] *Pārāśaramādhavīya*: cf. Ibid., I, p. 341.

[113] Cf. ibid, II, p. 237

[114] Cf. ibid, II, p. 269

[1 5] Cf. ibid, II, p. 425

[116] Cf. ibid, II, p. 533

[117] Cf. ibid, I, p. 300. The same opinion is given as an alternative interpretation by Nandapaṇḍita on Vi 17.15-16.

In Hindu law the heirs not only inherit the property of the deceased but also his debts. This principle remains valid also in the case of civil death resulting from renunciation. Viṣṇu is explicit on this point : when a debtor dies or renounces or is away in a distant land for twenty years his sons and grandsons should settle the debt.[120] Kātyāyana [575] states that the debts of persons who have gone on a long journey, or are without relatives, or have become idiots, mad, sick or *liṅgin*, should be taken over by those who have taken their wives or wealth. *Liṅgin* means a person who has assumed the signs of an ascetic, i.e. staff, begging-bowl etc.

The release from previous contractual obligations, especially from debts, resulting from renunciation must have tempted many. In most societies people who cannot meet their contractual obligations might resort to suicide. In India, however, renunciation was an alternative which to many must have seemed clearly preferable to suicide. Some restrictions, therefore, on who could legitimately renounce were bound to come. The *arthaśāstra* tradition was probably more concerned with the 'secular' repercussions of renunciation. Thus we find this unique rule in Kauṭilya's *Arthaśāstra* :

---

[118] *vānaprasthayatibrahmacāriṇām ācāryaśiṣyadharmabhrātṛsamānatīrthyā rikthabhājaḥ krameṇa*. Artha 3.16.37.

[119] *vānaprasthadhanam ācāryo gṛhṇīyāt, śiṣyo vā*. Vi 17.15-16.

[120] *dhanagrāhiṇi prete pravrajite dvidaśāḥ samāḥ pravasite vā tatputrapautrair dhanaṃ deyam*. Vi 6.27.

> One who has lost his capacity for activity (*luptavyāyāmaḥ*) may renounce home after securing permission from the judges *(āpṛcchya dharmasthān)*. Otherwise, he shall be put under restraint. [2.1.30-31]

The *Mahābhārata* [12.63.15] records a provision according to which only Vaiśyas are required to obtain the king's permission before renouncing. To my knowledge, these passages are the only evidence we have of the requirement that a man should obtain permission from a civil authority before renouncing. Further, according to Kauṭilya, "if one renounces home without providing for his sons and wife, the lowest fine for violence shall be imposed" [Artha 2.1.29]. These rules were no doubt formulated to prevent people from using renunciation as an easy way out of meeting their social obligations.[121]

Some civil laws affecting a renouncer are not directly based on his civil death. The most important of them prevents a renouncer from being called as a witness in a court of law. Proto-Bau [1.19.13] excludes a learned Brahmin *(śrotriya)*, the king and a renouncer from being a witness. Manu [8.65] includes *liṅgastha* and one detached from pleasures *(saṅgebhyo vinirgataḥ)* among those who cannot be called as witnesses. These terms are interpreted by all commentators as including the renouncer. According to Vi [8.2] also a renouncer cannot be a witness. Yāj [2.70], on the other hand, uses the word *pākhaṇḍin*, which normally means a heretical renouncer. It is unclear whether he intended to include all renouncers under this term. Kauṭilya excludes those who are unfit for transactions from being witnesses [Artha 3.11.28]. We have already seen that according to him renouncers cannot conclude legal transactions [Artha 3.1.12]. Elsewhere, Kauṭilya asserts : "In the case of secret transactions, one woman or man who has heard or witnessed it may be cited as a witness, excepting the king and an ascetic *(tāpasa)*" [Artha 3.11.31]. Nārada [1.157] gives five reasons for excluding people from being witnesses : (1) explicit statement in authoritative texts *(vacanāt)* ; (2) depravity *(doṣa)* ; (3) contradiction *(bheda)* ; (4) uncalled for deposition *(svayamukti)* ; (5) when the claimant is dead *(mṛtāntara)*. Then he states : "Learned Brahmins, ascetics, old people and renouncers are not to be witnesses, because it is so stated in authoritative texts ; no reason is given for this."[122] Thus, Nārada thinks that these people are excluded solely on scriptural authority and not because a rational explanation can be given for their exclusion.

---

[121] In Buddhism detailed rules were formulated regarding those disqualified from entering the *saṅgha*. Thieves, debtors and slaves were specifically barred from entry. Cf. *Mahā-vagga*, 1.39-76. Among others, robbers, slaves, servants and enemies of the king were forbidden to enter the Jaina order : cf. S. B. Deo, op. cit., p. 379.

According to Kātyāyana [115] and Bṛhaspati [10.79 : Aiyangar ed.] renouncers are also barred from being sureties. As Sternbach has suggested,[123] this may be due to the fact that renouncers, possessing no property or wealth, were unsuitable for becoming sureties. Further, their itinerant life-style would make it difficult to track them down. In contrast to renouncers, we find that hermits who lived in forest hermitages practising mortifications were used as sureties for pacts between kings. Thus, Kauṭilya says : "He (the king) should win over a greedy or a weakened king with gifts after making an ascetic *(tapasvin)* or a chief stand surety" [Artha 9.6.23]. An ascetic may have been considered a suitable surety in those cases which did not involve monetary transactions, because one who broke the pact would have had to contend with the wrath of the ascetic surety, something much feared in ancient India.

Nārada [1.256] stages that ascetics *(tapasvin)*, among others, should not be made to undergo an ordeal. It is unclear whether the term *tapasvin* is used by Nārada in a restricted sense to indicate only forest hermits or in a broader sense to include all 'holy men'. Kātyāyana [428], however, is more explicit. He excludes a *liṅgin* from ordeals. This term generally includes the renouncer. Kauṭilya [Artha 4.8. 19-20] also prescribes the use of secret agents to determine the truth when ascetics *(tapasvin)* are involved in a dispute, in place of ordeals.

---

[122] *śrotriyās tāpasā vṛddhā ye ca pravrajitā narāḥ / asākṣiṇas te vacanān nātra hetur udāhṛtaḥ //* N 1.158.

[123] L. Sternbach, *Juridical Studies* (Delhi : Motilal Banarsidass, 1965), I, p. 177.

Having no money, renouncers could not be fined. An interesting substitute is recommended by Kauṭilya [Artha 3.16.38]. Hermits, renouncers and Vedic students who are convicted of an offence should engage in religious exercises, such as fasting, bathing and worshipping the sacred fire, for as many nights as the number of *paṇas* prescribed as the fine. The merit accrued therefrom is transferred to the king. Heretical ascetics *(pāṣaṇḍa)* also are required to do penances and vows according to their own religious practices in place of the fine [Artha 3.16.40]. Elsewhere, however, Kauṭilya prescribes for a mendicant *(bhikṣuka)* as many lashes with a whip as the number of *paṇas* fined [Artha 4.1.63]. It is unclear, however, whether *bhikṣuka* here means a religious mendicant or an ordinary beggar, who also would have no money to pay a fine. In general, judges are asked to show leniency towards ascetics *(tapasvin)* and leaders of renouncer sects *(tīrthakara)* : Artha 3.20.21. Kātyāyana [953] also admonishes the king to give only oral reprimands *(vāgdaṇḍa)* to ascetics : he should say 'fie' *(dhik)* to them.

The renouncer was also an exception to the right of ownership through possession. Gautama states :

> The property of (a person who is) neither an idiot nor a minor, having been used by strangers before his eyes for ten years, (belongs) to him who uses it, but not (if it is used) by learned Brahmins *(śrotriya)*, renouncers or royal officials. [Gau 12.37-38]

It is interesting that none of the later dharmaśāstric writers exempt the renouncer.[124] The probable reason is that such an exemption was superfluous, given the general rule against ownership of property by renouncers.

---

[124] The parallel passages in later dharmaśāstras are : M 8.145-149 ; Yāj 2.24 ; N 1.78-79 ; K 317-318.

His vow of poverty exempted the renouncer from both tolls and taxes. Tolls were normally collected at ferry crossings. Manu [8.407] exempts four categories of people from the toll : pregnant women, renouncers, *munis* (interpreted as hermits) and Vedic students. Vas [19.23] also includes the renouncer among those exempt from ferry tolls. Kauṭilya [Artha 2.28.18] similarly exempts Brahmins, renouncers, children, old and sick persons, carriers of royal edicts and pregnant women, but specifies that they should carry with them a sealed pass. Vi [5.132] imposes a fine of ten *paṇas* on a ferryman or a toll-collector, who takes a toll from Vedic students, hermits, mendicants, pregnant women and pilgrims. Āp [2.26.14,17] exempts from general taxation ascetics (*tapasvin*) and those to whom the acquisition of property is forbidden, i.e. renouncers.

Perhaps one of the most important provisions of Hindu law on renunciation concerns the position of a renouncer who returns to society, in other words an apostate from renunciation. Y. Krishnan has ably shown that according to Hindu law it was not permissible for a renouncer to become a layman once again.[125] Permissible or not, many did leave renunciation and reentered society. That this was common is demonstrated by Kauṭilya, who enumerates apostate renouncers (*udāsthita*) and renouncers who aspire to gain an easier livelihood and are on the verge of apostasy (*vṛttikāma*) among those who should be used as spies.[126] It also shows their precarious situation, which made them easy targets for conscription into spy establishments. Becoming spies for the king was the only way out of the miserable condition awaiting them on reentering society. All dharmaśāstric writers from Vi [5.152] onwards agree that an apostate renouncer (*pratyavasita*) becomes a slave of the king. Yāj [2,183] specifies that this slavery lasts until death. This position is reaffirmed by Nārada [5.35] and Kātyāyana [731]. Nārada [5.29-38] gives several means of freeing a slave. Only two types of slaves, an apostate renouncer and one who has sold himself, can never be freed by any means.

---

[125] Y. Krishnan, "Was it Permissible for a *Saṃnyāsī* (Monk) to Revert to Lay Life ?" *Annals of the Bhandarkar Oriental Institute*, 50 (1969), pp. 79-89.

[126] Cf. Artha 1.11-12.

Medieval commentators were involved in a dispute as to whether even a Brahmin who abandons renunciation should be made a slave. Śūlapāṇi, Aparārka and Mitra Miśra, commenting on Yāj 2.183, exclude a Brahmin from the provision that an apostate becomes a slave of the king. They base this interpretation on the well-known maxim that slavery is in the direct order of castes and not in the inverse order.[127] Accordingly a Śūdra can be a slave of a Vaiśya, Kṣatriya or Brahmin ; a Vaiśya of a Kṣatriya or Brahmin ; and a Kṣatriya of a Brahmin ; but a Brahmin can never be a slave. Kātyāyana explicitly states that slavery is permissible only in the case of the last three *varṇas* and not in the case of a Brahmin.[128] Consequently, according to these commentators, a Brahmin apostate should be branded on the forehead with the mark of a dog's foot and banished from the kingdom. Aparārka cites a passage of Kātyāyana [721] in support of this view : "When persons belonging to the three twice-born *varṇas* revert from renunciation, Brahmins should be banished, while Kṣatriyas and Vaiśyas should be made the king's slaves."[129]

Vijñāneśvara and Viśvarūpa, however disagree. They consider apostasy an exception to the general rule against reducing Brahmins to slavery. Nārada [5.39], in fact, excludes "those who abandon their proper *dharma*" (*svadharmatyāginaḥ*) from that general rule and Vijñāneśvara interprets that term to mean an apostate from renunciation.

---

[127] *varṇānām ānulomyena dāsyaṃ na pratilomataḥ.* Yāj 1.183 ; K 716 ; *varṇānāṃ prātilomyena na dāsatvaṃ vidhīyate.* N 5.39.

[128] *triṣu varṇeṣu vijñeyaṃ dāsyaṃ viprasya na kvacit.* K 715.

[129] *pravrajyāvasitā yatra trayo varṇā dvijātayaḥ / nirvāsaṃ kārayed vipraṃ dāsatvaṃ kṣatraviṇ nṛpaḥ //* K 721.

Manu does not openly discuss apostasy. However, he includes "one enslaved by way of punishment" (*daṇḍadāsa*) among the seven types of slaves [M 8.415]. This term is interpreted by Sarvajñanārāyaṇa and Nandana to mean an apostate who is enslaved as a punishment.

CONCLUSION

The Oxford English Dictionary defines 'history' as "A written narrative constituting a continuous methodical record, in order of time, of important or public events.' The chronology of ancient Indian literature is too uncertain to permit such a history of any ancient Indian institution. Historians of ancient India have to be content with drawing broad outlines of changes in social institutions and ideas that may have taken place over decades and centuries. The *dharmaśāstras* are a fruitful source for such an endeavour, especially because a trustworthy relative chronology of these works has been established. Even here, we do well to heed Lingat's caution :

> It would be hazardous to imagine social reality through their precepts or to take their precepts for rules of law in force in their times. One can only draw from a comparative examination of the texts indications about some currents of opinion amongst the writers, currents which plausibly reflect changes of ideas or of manners in the population. In default of a history of the ancient law, i.e. of society properly so called, one might perhaps attempt a history of social ideas, using the different and sometimes contradictory views which we recognize when we compare the *dharma-śāstras* with each other. But the grave uncertainty of the chronology and the huge gaps in our knowledge about the *dharma-śāstra* literature leaves hardly any solid ground for such an enterprise.[130]

---

[130] R. Lingat, op. cit., p. 183.

In scholarship, as in other areas, caution from time to time must give way to adventure and risks must be taken if stagnation is to be avoided. Errors committed in such risky endeavours may help to further knowledge more than the safety of overcaution. The present paper, in attempting to trace at least a partial history of renunciation in its interrelationship with social institutions and ritual Brāhmaṇism by an analysis of the dharmaśāstric evidence, has taken such a risk. I hope it has not turned out to be rash.[181]

---

131. On the term '*saṃnyāsa*' see my recent article, "Contributions to the Semantic History of *Saṃnyāsa*," *Journal of the American Oriental Society*, 101 (1981), pp. 265-274. The present paper was written in 1977 and, therefore, I was not able to use the excellent work by J. F. Sprokhoff, *Saṃnyāsa: Quellenstudien zur Askese im Hinduismus*. I—*Untersuchungen über die Saṃnyāsa-Upaniṣads*. Wiesbaden 1976.

RICHARD SALOMON, UNIVERSITY OF WASHINGTON

LEGAL AND SYMBOLIC SIGNIFICANCE OF THE "MENSTRUAL POLLUTION" OF RIVERS

Part I : Text Sources on ‘Nadīrajodoṣa.’

1. Texts Cited

A number of *dharma-śāstra* texts on such subjects as *ācāra, kāla, āhnika-kriyā, śuddhi, gṛhastha-dharma,* and *tīrtha* discuss the problem of the impurity of river water during the rainy season. This contamination is referred to as ‘rajas’ or ‘rajodoṣa,’ ‘(menstrual) defilement,’ and the rivers affected thereby as ‘rajasvalā,’ ‘(menstrually) defiled’. Some of the texts devote separate sections to this topic entitled ‘Nadīrajodoṣanirṇayah’ (*Smṛticandrikā*) or ‘Nadīnāṃ rajodoṣah’ (*Tristhalīsetu, Vīramitrodaya, Nirṇayasindhu*) ; that is to say, ‘(Determination of) the Menstrual Defilement of Rivers.’

Discussions of this question are found in the following texts, listed chronologically :

Karmapradīpa (KP) Kātyāyana (otherwise known as *Gobhila Smṛti* and *Chandoga-pariśiṣṭa*). Ed. Chandrakanta Tarkalamkara, Calcutta 1909 (Bibliotheca Indica work no. 179). Text no. I. 10. 5-14. Also included in *Smṛtīnāṃ Samuccaya,* Poona 1929 (Ānandāśrama Sanskrit Series no. 48) as *Gobhila Smṛti*. Text no. I. 141-150.

Kālaviveka (KV) of Jīmūtavāhana. Ed. Pramathanātha Tarkabhūṣaṇa, Calcutta 1905 (Bibliotheca Indica work no. 136). Pp. 280-282.

Aparārka (A), commentary on *Yājñavalkya Smṛti*. Poona 1903 (Ānandāśrama Sanskrit Series no. 46). Part I, p. 135.

Kṛtyakalpataru (KKT) of Lakṣmīdhara : Vol. III, *Niyatakālakāṇḍa*. Ed. K. V. Rangaswami Aiyangar, Baroda 1950 (Gaekwad's Oriental Series no. CXI). Pp. 46-47.

Smṛticandrikā (SC) of Devaṇa Bhaṭṭa : Vol. II, *Āhnikakāṇḍa*. Mysore 1914 (Bibliotheca Sanskrita no. 44). Pp. 340-344.

Gṛhastharatnākara (GR) of Caṇḍeśvara Ṭhakkura. Ed. Kamalakṛṣṇa Smṛtitīrtha, Calcutta 1928 (Bibliotheca Indica work no. 249). Pp. 197-199.

Madanapārijāta (MP) of Madanapāla. Ed. Madhusūdana Smṛtiratna, Calcutta 1893 (Bibliotheca Indica work no. 114). Pp. 250-252.

Varṣakriyākaumudī (VKK) and *Śuddhikaumudī* (SK) of Govindācārya Kavikaṅkanācārya. Ed. Kamalakṛṣṇa Smṛtibhūṣaṇa, Calcutta 1931-2 and 1904-5 (Bibliotheca Indica works no. 149 and 165). Pp. 109, 223-294 ; p. 325.

Tristhalīsetu (TSS) of Nārāyaṇa Bhaṭṭa. Ed. and trans. Richard G. Salomon, *The Sāmānya-praghaṭṭaka of Nārāyaṇa Bhaṭṭa's Tristhalīsetu : Critical Edition and Translation*, Ann Arbor, Michigan (Xerox University Microfilms), 1975. Text no. 346-367.

Tithitattva (TT) of Raghunandana Bhaṭṭācārya. In *Smṛtitattvam* Vol. I, ed. Jīvānanda Vidyāsāgara, Calcutta 1895. P. 153.

Nirṇayasindhu (NS) of Kamalākara Bhaṭṭa. Ed. Nārāyaṇ Rām Ācārya Kāvyatīrth, Bombay, 1949 (Nirṇaya-sagara Press). P. 86.

Vīramitrodaya (VM) of Mitramiśra : Vol. II, *Āhnikaprakāśa*. Benares, 1913 (Chowkhamba Sanskrit nos. 147-150, 153-154). Pp. 185-189 ; also pp. 175 and 179.

2. Verses on 'Nadīrajodoṣa.'

The following verses are cited in these texts to prescribe the rules concerning 'Nadīrajodoṣa.' The verses are classified here as : (A) General Prohibitions ; (B) Modified Prohibitions (with Exceptions) ; and (C) Exceptions to the General Prohibitions. After the initials indicating the text in which the verse appears is given the source to which it is attributed by that text.

A. 1. द्विमासं सरितः सर्वा भवन्ति हि रजस्वलाः ।

अप्रशस्तं ततः स्नानं वर्षादौ नववारिणि ॥
(v. 1. : KV भवन्तीह for भवन्ति हि)

KV p. 282 मार्कण्डेयधाम्ना धवलः 'Dhavala')
SC p. 341 मार्कण्डेयः
VM p. 185 „

For two months all rivers are defiled. Therefore bathing in the new water at the beginning of the rainy season is not recommended.

2. नभोनभस्ययोर्मध्ये सर्वा नद्यो रजस्वलाः ।
तासु स्नानं न कुर्वीत देवर्षिपितृतर्पणम् ॥

KV p. 282
KKT p. 46 छन्दोगपरिशिष्टः
SC p. 342 कात्यायनः
MP p. 250 देवलः
TSS 346 „
VM p. 185 स्मृतिचन्द्रिकादौ कात्यायनः

In the months of Nabhas (Śrāvaṇa) and Nabhasya (Bhādra) all rivers are defiled. One should not bathe in them, nor give water offerings for the gods, seers, or ancestors.

3. सिंहकर्कटयोर्मध्ये सर्वा नद्यो रजस्वलाः ।
न स्वावादीवि कर्माणि तासु कुर्वीत मानवः ॥

VKK p. 298 अत्रिः
TSS 347 „
NS p. 86 हेमाद्रावत्रिः
VM p. 185 स्मृतिचन्द्रिकादि

In Leo and Cancer all rivers are defiled. A man should not bathe or perform other ritual acts in them.

4. रजोदुष्टेऽम्भसि स्नानं वर्ज्यं नद्यादिषु द्विजैः ।
कदर्थितं वचस्तेषां सन्ध्योपास्तिश्च तर्पणम् ॥

TSS 364 योगयाज्ञवल्क्यः

The twice-born must avoid bathing in rivers, etc. when the water is defiled. This defilement is severely criticized. Sandhyā-worship and water offerings in them (are also to be avoided)

5. अग्राह्यास्त्वागता ह्यापो नद्याः प्रथमवेगिकाः ।

(vv. 11. : SC अग्रिमा for आगता हि ; TSS -वेगजाः for -वेगिकाः)

SC p. 340 योगयाज्ञवल्क्यः
TSS 306
VM p. 175 „

The first flood of water which comes (in the rains) is not to be used (for bathing).

B. 1. सिहकर्कटयोर्मध्ये सर्वा नद्यो रजस्वलाः ।
तासु स्नानं न कुर्वीत वर्जयित्वा समुद्रगाः ।।

TSS 348 व्याघ्रपाद
NS p. 86 „

In Leo and Cancer all rivers are defiled, except for those which flow to the ocean. One should not bathe in them.

2. यव्यद्वय श्रावणादि सर्वा नद्यो रजस्वलाः ।
तासु स्नानं न कुर्वीत वर्जयित्वा समुद्रगाः ।।

(vv. 11. : KV पक्षद्यं for पक्षद्वयं ; for यव्यद्वय ; A मासद्वयं for यव्यद्वय˙ SC p. 340 संप्राप्ते श्रावणे मासे for pāda a ; MP नभोवभस्ययोर्मध्ये for pāda a.)

KP I. 1.10.5
KV p. 281
A p. 135 कात्यायनः
KKT p. 46 छन्दोगपरिशिष्टे कात्यायनः
SC pp. 340, 341 कात्यायनः
GR p. 197 छन्दोगपरिशिष्टे कात्यायनः

MP p. 250 देवल:
VKK pp' 109, 293 छन्दोगपरिशिष्टे:
SK p. 325 ,,
TT p. 153 ,,
VM p. 185 ,,

For two months beginning with Śrāvaṇa, all rivers are defiled, except for those which flow to the ocean. One should not bathe in them.

3. प्रावृट्काले महानद्य: सन्ति सद्यो रजस्वला: ।
तासु स्नानं न कुर्वीत वर्जयित्वा तु जाह्नवीम् ॥
SC p. 341 कात्यायन:

At the time of the rainy season all rivers immediately become defiled, except for the Jāhnavī (Ganges). One should not bathe in them.

4. यावन्नोदेति भगवान्दक्षिणा शाविभूषणम ।
तावद्रेतोवहा नद्य: वर्जयित्वा तु जाहनवीम् ॥
(vv. 11. : TSS, NS 'rajovahā' for 'retovahā,' 'Karatoyāh prakīrtitāh' for pāda d.)

SC p. 340 योगयाज्ञवल्क्य:
TSS 352 मातस्यम्
NS p. 86 ,,
VM p. 185 योगयाज्ञवल्क्य:

Until the Lord Ornament of the Southern Skies (Agastya) rises, all rivers except the Jāhnavī (Ganges) carry seed.

5. आदौ तु कर्कटे देवि महानद्यो रजस्वला: ।
त्रिदिनं तु चतुर्थेऽह्नि शुद्धा: स्युर्जाह्नवी यथा ॥
MP p. 250 भविष्यपुराणम्
TSS 349 भविष्योत्तरे
NS p. 86 भविष्यम्

At the beginning of Cancer, O Goddess, the great rivers are defiled for three days. But on the fourth day they become as pure as the Jāhnavī (Ganges).

6. आदौ कर्कटके देवि त्र्यहं यावद्रजस्वला ।
चतुर्थेऽहनि संप्राप्ते शुद्धा भवति जाह्नवी ॥

GR p. 199
VKK p. 293 नामशुन्यम्
VM p. 186 कात्यायनः

At the beginning of Cancer, O Goddess, the Jāhnavī (Ganges) is defiled for three days. When the fourth day arrives it becomes pure.

7. प्रवृत्ते श्रावणे मासे त्र्यहं गंगा रजस्वला ।
चतुर्थेऽहनि संप्राप्ते शुद्धा भवति जाह्नवी ॥

SC p. 342 कात्यायनः

When the month of Śrāvaṇa begins, for three days the Ganges is defiled. When the fourth day arrives the Jāhnavī (Ganges) becomes pure.

8. मासद्वयं कर्कटादि सर्वा नद्यो रजस्वलाः ।
समुद्रगामिनीनां तु षड्रात्रं रज इष्यते ॥

VM p. 186 हेमाद्रौ भगवतीपुराणम्

For two months beginning with Cancer all rivers are defiled. But only six nights' defilement is prescribed for those rivers which flow to the ocean.

9. याः शोषमुपगच्छन्ति ग्रीष्मे कुसरितो भुवि ।
तासु प्रावृषि न स्नायादपूर्णे दशवासरे ॥

SC p. 340 कात्यायनः
TSS 353 ,,
NS p. 86 ,,
VM p. 176 स्मृतिचन्द्रिकादौ

In the rainy season, one should not bathe in those lesser rivers of the earth which dry up in the hot season.

C. 1. सरस्वती नदी पुण्या तथा वैतरणी नदी ।
आपगा च महापुण्या गङ्गा मन्दाकिनी तथा ॥
मधुस्रवा चाँशुनदी कौशिकी पापनाशिनी ।
दृषद्वती महापुण्या तथा हैरण्वती नदी ॥
वर्षाकालवहाः सर्वा वर्जयित्वा सरस्वतीम् ।
एतासामुदकं पुण्यं वर्षाकाले प्रकीर्तितम् ॥
रजस्वला त्वमेतासां विद्यते न कदाचन ।

(vv. 11. : SC प्रवर्षितम् for प्रकीर्तितम् ; VM, fifth line omitted.)

SC p. 343 वामनपुराणम्
VM pp. 186–7 „

The auspicious river Sarasvatī and also the Vaitaraṇī; the most auspicious river Ganges, and the Mandākinī ; the honey-flowing Aṃśu and sin-destroying Kauśikī ; the most auspicious Dṛṣadvatī, and the river Hairaṇvatī : all these, except the Sarasvatī, flow in the rainy season. Their water is said to be auspicious (even) in the rainy season ; there is never any defilement for them.

2. गंगा च यमुना चैव प्लक्षजाता सरस्वती ।
रजसा नाभिभूयन्ते ये चान्ये नदसंज्ञिताः ।
शोणसिन्धुहिरण्याख्याः कोकलोहितघर्घराः ।
शतद्रुश्च नदाः सप्त पावनाः परिकीर्तिताः ॥

(vv. 11. : SC, VM आदित्यदुहिता गंगा for pāda a ; संज्ञिका. for संज्ञिता ; MP. TT ब्रह्मणः सुताः for परिकीर्तिताः ; TT-लोहित्य for लोहित-)

SC p. 343 मार्कण्डेयः (First verse only)
MP p. 251 देवलः

TSS 354 देबलः
NS p. 86 „
VM p. 186 मार्कण्डेय (First verse only)

The Ganges, the Yamunā, and the Sarasvatī born of the fig-tree are not affected by defilement. Neither are those which are known as male rivers (*nada*). The Śoṇa, Sindhu, and Hiraṇyākhya, the Koka, Lohita, and Ghargharā, and the Śatadru are famed as the seven purifying male rivers.

3. तपनस्य सुता गङ्गा गौतमीच सरस्वती ।
रजसा नाभिभुयन्ते वेणा च नदसंज्ञिताः ।।
TSS 355 स्मृतिसंग्रहः

The daughter of the Sun (Yamunā), the Ganges, Gautamī, and Sarasvatī are not affected by defilement. Neither is the Veṇā, nor those known as male rivers.

4. तपनस्य सुता गङ्गा गोमती च सरिद्वरा ।
रजसा न प्रदुष्यन्ति ये चान्ये नदसंज्ञकाः ।।
(vv. 11. : SC, VM ये चान्ये पुन्नदाः स्मृताः for pāda d ; VKK सरस्वती for सरिद्वरा)
SC p. 343 कात्यायनः
GR p. 199
VKK p. 293 निगमः
VM p. 186 स्मृतिचन्द्रिकायां कात्यायनः

The daughter of the Sun (Yamunā), the Ganges, and the Gomatī, best of rivers, are not polluted by defilement. Neither are those known as male rivers.

5. प्रतिस्रोतो रजोयोगो रथ्याजलनिवेशनम् ।
गङ्गायां न प्रदुष्यन्ति सा हि धर्मद्रवः स्वयम् ।।
(vv. 11. : SC धर्मोद्भवा for धर्मद्रवः ; MP-द्रवी for द्रवः)
SC p. 343 यमः

MP p. 250
TSS 307
VM p. 175 मार्कण्डेयः, p. 187 स्मृतिचन्द्रिकादिषु यमः

A reversed current, defilement, and the entry of water from roads do not pollute the Ganges ; for it is the stream of Dharma itself.

6. गङ्गा धर्मद्रवः पुण्या यमुना च सरस्वता ।
अन्तर्गतरजोदोषाः सर्वावस्थासु चामलाः ॥
(vv. ll. : SC धर्मोद्भवा for धर्मद्रवः ; सर्वाहिष्वपि for सर्वावस्थासु ; VM सर्वाहःसु for सर्वावस्थासु)
SC p. 342 यमः
MP p. 251 निगमः
TSS 356 ,,
NS p. 86 ,,
VM p. 187 स्मृतिचन्द्रिकादिषु यमः

In the Ganges, stream of Dharma, in the auspicious Yamunā, and in the Sarasvatī, the defilement disappears, and they are immaculate at all times.

7. प्रथमं कर्कटे देवि त्र्यहं गङ्गा रजस्वला ।
सर्वा रक्ता महानद्यः करतोयाम्बूवाहिनी ॥
(v. l. : VM रक्तवहा for रक्ता महा-)
SC p. 342
TSS 357 (first line only)
TS p. 86 (,,)
VM p. 186

At the beginning of Cancer, O goddess, for three days the Ganges is defiled. All the great rivers are bloody, but the Karatoyā flows with water.

8. महानद्यो देविका च कावेरी वञ्जरा तथा ।
रजसा तु प्रदुष्टाः स्युः कर्कटादौ त्र्यहं नृप ॥

NS p. 86 मदनरत्ने पुराणान्तरम्

At the beginning of Cancer the great rivers, the Devikā, the Kāverī, and the Vañjarā are polluted by defilement for three days.

9. कर्कटादौ रजोदुष्टा गोमती वासरत्रयम् ।
चन्द्रभागा सती सिन्धुः सरयूर्नर्मदा तथा ॥

SC p. 343 कात्यायनः
MP p. 251
TSS 358
NS p. 86 कात्यायनः
VM p. 186 „

At the beginning of Cancer the Gomatī is polluted by defilement for three days; and so are the pure Candrabhāgā, the Sindhu, the Sarayū, and the Narmadā.

10. उपाकर्मणि चोत्सर्गे प्रेतस्नाने तथैव च ।
चन्द्रसूर्यग्रहे चैव रजोदोषो न विद्यते ॥

KP I. 10. 7
KV p. 280 छन्दोगपरिशिष्टे कात्यायनः
A p. 135 कात्यायनः
KKT p. 46-7 छन्दोगपरिशिष्टे कात्यायनः
SC p. 344 कात्यायनः
GR p. 198 छन्दोगपरिशिष्टे कात्यायनः
VKK p. 294 परिशिष्टः
SK p. 325 छन्दोगपरिशिष्टः
TSS 367 वासिष्ठः
TT p. 153 छन्दोगपरिशिष्टः
NS p. 86 वासिष्टः
VM p. 188 छन्दोगपरिशिष्टे कात्यायनः

In the opening and closing ceremonies of the study-term, and in bathing for the deceased, and also at an eclipse of the sun or moon, there is no defilement.

11. स्वर्धुन्यम्भःसमानि स्युः सर्वाण्यम्भांसि भूतले ।
कूपस्थान्यपि सोमार्कग्रहणे नात्र संशयः ।।

KP I. 10.14
A p. 135 कात्यायनः
KKT p. 47 छन्दोगपरिशिष्टे कात्यायनः
SC p· 344 कात्यायनः
GR p. 199 छन्दोगपरिशिष्टे कात्यायनः
TT p. 153 छन्दोगपरिशिष्टः
VM p. 188 छन्दोगपरिशिष्टे कात्यायनः

Without doubt, at the time of a solar or lunar eclipse, all waters on earth, even those in wells, are equal to those of the heavenly river (Ganges).

12. ···न तु तत्तीरवासिनाम् ।
(vv. 11. : TT न दुष्येत् for न तु तत्- ; VM न दुष्ट for न तु नत्-)

MP p. 251 निगमः
TSS 359 ,,
TT p. 153 मदनपारिजाते निगमः
NS p. 86 निगमः
VM p. 117 ,,

...but there is no (defilement) for those who dwell on the banks of that (river).

13. अभावे कूपवापीनामनपायिपयोभृताम् ।
रजोदुष्टेऽपि पयसि ग्रामभोगो न दुष्यति ।।
(v. 1. : TT अन्येनापि समुद्धृते for pāda b.)

MP p. 252 व्याघ्रपादः
TSS 366 ,,

TT p. 153 व्याघ्रपाद:
NS p. 86 „

In the absence of wells and ponds or of lasting clouds, the use (of river water) in a village[1] is not contaminating, even if the water is polluted by defilement.

14. उद्धृतेषु च तोयेषु रजोदोषो न विद्यते ।
VKK p. 293 प्रांचः

In water drawn (out of a river) there is no defilement.

3. Secondary Sources

Secondary references to and discussions of the problems of 'Nadīrajodoṣa' are extremely few. P. V. Kane in *History of Dharmaśāstra* vol. II part 1, pp. 660-1 briefly summarizes the rules presented in the texts cited above, quoting verses B2 and C10 in footnote 1567. K. V. Rangaswami Aiyangar in his introduction to the *Niyatakālakāṇḍa* of the KKT describes the same rules in slightly more detail (pp 7-8 ; also p. vi). Finally, J. R. Gharpure has translated the "Nadīrajodoṣanirṇaya' of the *Smṛticandrikā* as 'The Rule about defects in the river impurities' in *Collection of Hindu Law Texts*, vol. XXVIII (Bombay 1946), pp. 215 8, with a few brief explanatory notes.

Part II : The Rules of 'Nadīrajodoṣa.'

The basic rule of 'Nadīrajodoṣa' is that during the months of Śrāvaṇa (July-August) and Bhādra or Bhādrapada (August-September)—that is to say, during the rainy season—rivers are 'defiled' or 'contaminated' (*rajasvalā*), and one may not bathe (A1) nor perform certain other ritual acts (A2-4) in them. The other prohibited acts are specifically enumerated as giving water offerings (*tarpaṇa*) to gods, seers, and ancestors (A2), and performing the *sandhyā*-worship.

---

[1] The meaning of *grāmabhoga* is not clear. (None of the commentators explain it.) Could it also mean 'feeding in groups', i.e. giving feasts ?

However, a wide range of exceptions to the general rule is allowed. These exceptions include : (1) Complete and partial exemptions of certain rivers and types of rivers (B1-9, C1-9) ; (2) Exemptions of certain rituals (C-10) ; (3) Exceptions at certain special times (C10-11, 13) ; (4) Exemptions on the basis of one's place of residence (C12) ; and (5) Other miscellaneous exemptions (C13-14).

Under (1), rivers which flow to the sea[2] are exempted from pollution by *rajas*, either completely, according to B1 and 2, or partially, according to B8 ; 'Major' or 'Great Rivers' are partially exempt, according to C-7 and 8 ; and 'Male Rivers' are exempt by C2-4. 'Small Rivers' are also partially exempted by B9. Specific rivers which are mentioned as partly or wholly excepted are : Ganges (B3-7, C1-7), Sarasvatī (C1-3, 6), Yamunā (C2-4,6), Gomatī (C4.9), Gautamī (Godāvarī) (C3); Vaitaraṇī, Mandākinī, Aṃśu, Kauśikī, Dṛṣadvatī, and Hairaṇvatī (C1) ; Devikā, Kāverī, and Vañjarā (C8) ; Candrabhāgā, Sindhu, Sarayū, and Narmadā (C9).

Under (2) the rituals of *upākarma* and *utsarga* are exempted, as they are always performed in the months of Śrāvaṇa and Bhādra[3] ; and bathing on the occasion of the death of a family member (*pretasnāna*) is excepted, as it occurs unpredictably and cannot be postponed (C10).

In (3), all rules of pollution or defilement are cancelled when a solar or lunar eclipse occurs (C10), for at such a time all water becomes equal (in purifying power) to the Ganges (C11).

Under (4), the defilement of a particular river is said not to apply to those people who dwell on its banks (C12).[4] In (5), when no well or pond water is available, or at times of drought, one may make use of defiled (river-) water (C13) : and water drawn out of a polluted river is not affected by that defilement (C14).

---

[2] Later commentators (e.g. *Varṣakriyākaumudī* pp. 109 and 293 and *Vīramitrodaya* p. 185) specify that this refers only to rivers which flow directly to the ocean, not those which reach the ocean via other rivers (साक्षात्समुद्रगा न तु परम्परया)

[3] *Utsarga* was originally performed separately in the month of Pauṣa, but now-a-days is done on the same day as *upākarma* (Kane, *History of Dharmaśāstra*, vol. II, part 2, p. 807).

A careful comparison of the rules concerning pollution of rivers shows that there is a great deal of inconsistency and even direct contradiction among the various prescriptions, particularly concerning their application to certain classes of rivers and to some specific rivers. Thus, for instance, according to B1 and 2, rivers which flow to the ocean are exempted without qualification from menstrual defilement ; but in B8, they are said to be only partially exempt, being subject to defilement for only the first six nights, instead of the full two months. Similarly, in B3 the 'Great Rivers' are declared to be defiled for the whole rainy season ; but in C7 and 8 this defilement is prescribed for only three days.

In the case of particular rivers, C3 and 4 proclaim that the Gautamī (Godāvarī) and Gomatī are immune from defilement, while C9 says that the Gomatī is defiled for a period of three days. In the case of the Ganges (Gaṅgā or Jāhnavī) the situation is even more complicated : While several verses (B3-4, C1-5) specifically and fully exempt it from pollution, others (6-7, C7) say it is defiled for three days. A third opinion is given in C6, where the Ganges (and the Yamunā and Sarasvatī) are said to have a defilement which (automatically) 'disappears' or 'is overcome' (*antargatarajodoṣa* : Gharpure, p. 217, translates literally "although having dust inside").

In this subject, as in so many others, the *nibandhakāras* and commentators must exercise a great deal of their ingenuity in resolving such contradictions (or, as they would have it, apparent contradictions) between the various sources of *smṛti* law. The prescriptions of the various *smṛtis* must all be accepted as equally authoritative, and therefore apparent contradictions must be resolved by any of a variety of interpretive devices. One common technique is to take one rule as a sub-rule or specification of another which it seems to contradict. Or, one may attribute a particular modification or limitation to a rule on the grounds that it is implicitly intended. In some cases, a contradictory *smṛti* rule is rejected as non-authentic.

---

[4] C12 is a single *pāda* of a *śloka*, cited by several *nibandhakāras* as from 'Nigama,' which apparently has not been preserved in full. Its application to the question of 'Nadīrajodoṣa' is clear, however, from the contexts in which it is quoted.

The various commentators make use of all of these techniques in their attempts to reconcile the rules concerning 'Nadīrajodoṣa'. This is especially notable in connection with the problem of the special rules for the Ganges, where we find a wide disparity in interpretive methods and the conclusions reached thereby. Thus :

—Devaṇabhaṭṭa in the *Smṛticandrikā* (p. 342) concludes that the prescription given in B7 of a limited period of three days' impurity for the Ganges is authoritative, and that the unspecified exemption given in B3 is not intended as a blanket exemption. (यत्तु कात्यायनेन प्रावट् काले इत्युपक्रम्य वर्जयित्वा तु जाह्नवीमित्युक्तं न तन्नस्यास्सर्वत्र प्रावृट् काले रजोयोगाभावप्रतिपादनपरम्)

—Caṇḍeśvara in *Gṛhastharatnākara* (p. 199) does not accept any exemptions, holding that the Ganges, like any other river, is defiled for a full two months, and that verses such as C6 which provide full or partial immunity are to be ignored, as they are not accepted by authoritative people, nor included in collections (of authoritative sayings). (इति वचनद्वयं प्रचरदपि महाजनापरिग्रहात्संहितास्वदर्शनाच्चोपेक्षितम्)

—Madanapāla in the *Madanapārijāta* (p. 251) determines that those passages which describe the Ganges as defiled actually refer to the 'disappearing' defilement of verse C6, and that the Ganges is immune at all times. (गङ्गा रजस्वलेत्यादिगङ्गायमुनासरस्वतीनां

रजोदोषप्रापकानि यानि तान्यपि अन्तर्गतरजोदोषविषयानि। अतो न दोषः) Nārāyaṇa Bhaṭṭa expresses the same view in *Tristhalīsetu* 357.1.

—Govindānanda in *Varṣakriyākaumudī* (p. 193) holds that the Ganges is not affected by defilement, on the grounds of verse C4 ; although verses such as B6 attribute three days' defilement to the Ganges, one need not avoid bathing there even at such a time. (इति नामशून्यं वचनं तद्रजोयोगमात्रं बोधयति न तु स्नानादिनिषेधम्)

—Kamalākara in the *Nirṇayasindhu* (p. 86) decides that the Ganges is wholly immune, citing the view that C7, which attributes three days' impurity to "the Ganges" actually refers to rivers other than the Jāhnavī (the Ganges proper), such as the Godāvarī, which are also sometimes called "Gaṅgā." (तज्जाह्नवीभिन्नगोदावर्यादिगङ्गान्तरपरम्) (Kamalākara also cites the view of the *Madanapārijāta* and *Tristhalīsetu* as an alternative explanation.)

—Mitramiśra in the *Vīramitrodaya* (p. 187) concludes that the Ganges is affected by *rajas* for three days ; but such statements as C6 and C5 mean that one may effectively disregard that defilement and bathe anyway. (तथा च सत्यपि रजोयोगो तत्र स्नानादौ न दोष इति प्रतीयते) Here he is essentially in agreement with Govindānanda.

Other controversies concerning conflicting rules for various classes of rivers are similarly explained by different commentators in different ways. On the whole, there is a striking lack of unanimity in the interpretation and application of the rules of 'Nadīrajodoṣa'.

Part III : The tradition Represented in the Texts

1. Age of the Tradition

With the exception of the *Karmapradīpa (*or *Gobhila Smṛti, Kātyāyana Smṛti*, etc.*)*, in which the most widely quoted verses on the subject first appear, all the texts which discuss the matter of menstrual pollution are more or less precisely datable to the medieval period. The earliest among them, the *Kālaviveka* of Jīmūtavāhana, is dated by Kane *(History of Dharmaśāstra* vol. I part 2, p. 709) at "soon after" 1092 A.D. The next work, Aparārka's commentary, is placed by Kane at around 1115-1130 A.D. (*ibid.* p. 1162), while the *Kṛtyakalpataru* and *Smṛticandrikā* are placed by him later in the 12th century (*ibid.* pp. 677, 695, 740-1). The remaining texts date from the following five centuries, with the latest being the *Nirṇayasindhu* written in 1612 (*ibid.* p. 932) and the Vīramitrodaya, c. 1610-1640 (*ibid.* p. 953).

The dating of the *Karmapradīpa*, in which the concept of menstrual pollution first appears, is unfortunately problematic. Kane (*op. cit.* vol. I part I, p. 504) believes that it dates from "long before the 11th century" on the grounds that it is cited by the *Mitākṣarā* and *Aparārka*, and he refers to it (p. 505) as "an early work" : but he declines to attribute any specific date to it. All that is certain, then, is that the *Karmapradīpa* is earlier than the 11th century ; how much earlier is apparently not determinable.

It appears that the tradition of 'Nadīrajodoṣa' belongs primarily, if not exclusively, to the medieval period. It is interesting to note in this connection the mention of the rising of Agastya (i.e. the star Canopus) in B4 as marking the end of the period of menstrual impurity. The tradition that the appearance of Agastya indicates the end of the rainy season and the beginning of autumn is quite ancient, as is the idea that Agastya cleanses the water of the earth at this time. Thus Kālidāsa (4th century A.D. ?) in the *Raghuvaṃśa* (XIII. 36) describes Agastya as "the purifier of the turbid waters" (आविलाम्भः-परिशुद्धिहेतु). Then in *Bṛhatsaṃhitā* XII. 7 (6th century A.D.), Varāhamihira says :

उदये च मुनेरगस्त्यनाम्नः कुसमायोगमलप्रदूषितानि ।
हृदयानि सतामिव स्वभावात्पुनरम्बूनि भवन्ति निर्मलानि ॥

And at the rising of the sage named Agastya, the waters which had been polluted by contact with earth become once again as naturally pure as the hearts of the good.

In both of these early sources, however, the pollution which is said to affect waters in the rainy season and which is removed by Agastya in explicitly described as turbidity or muddiness. In other words, they refer to a purely physical impurity, with no suggestion of the symbolic metaphorical menstruous impurity of the later texts. It would seem that the notion of menstrual impurity of rivers was a symbolic elaboration which became current in the medieval period, of the earlier, purely physical description of the natural pollution by mud which occurs in the rainy season.

2. Practical Significance of 'Nadīrajodoṣa'.

It is difficult to determine what in *dharmaśāstra* (as, indeed, in all aspects of traditional Indian lore) represents actual practice, and what is merely theoretical. The tradition of 'Nadīrajodoṣa' is one case in which there is considerable reason to suspect that the prescriptions of the *smṛti* were more symbolic and theoretical than practical. The main reasons for this suspicion are (1) The widespread disagreement among the various authors as to the application and interpretation of these prohibitive laws, and (2) The great number of exceptions and exemptions which vitiate the effect of the basic rules.

We have seen above (in Part II) that the different *smṛti* texts prescribe three different rules concerning the defilement of the Ganges (i.e. it is defiled like other rivers, it is not defiled at all, and it is defiled for only three days) ; that each rule is upheld by one or more of the commentators on these rules ; and that even in the cases where those commentators come to the same final conclusion, they often disagree on the interpretation of specific rules.

Of course, it is not at all unusual for the *nibandhakāras* to have their differences ; indeed, controversies on interpretation of *smṛti* verses must have been the inspiration for a great deal of the medieval *dharmaśāstra* literature. But such extreme divergence of opinions as we find in this case is less usual, and cannot but give rise to a suspicion that the rules concerning 'Nadīrajodoṣa' were followed loosely, if at all, so that there was no consensus as to their proper interpretation.

Such doubts about the practical significance of the restrictions on menstrually polluted rivers are increased by noting the many exceptions permitted by the different sources, as enumerated above. According to these rules, 'Great Rivers', rivers which flow to the sea, and various specific rivers such as the Ganges, Yamunā, and Sarasvatī, are all partially or fully exempt. Moreover, if one dwells nearby a river, that river is not polluted for that person. Also, small streams are excluded according to *Karmapradīpa* I. 10.6, which says that those streams less than 8,000 'bows' in length (about 9 miles) are not called 'rivers,' and, it is implied, are not subject to menstrual pollution. Finally, according to one school, water drawn out of a polluted river is no longer polluted. (This is presented by Govindācārya in *Varṣakriyākaumudī* p. 293 as the view of the 'Prāñcah' or Eastern School, who arrive at this conclusion by a rather impressive display of literalistic pedantry. According to them, since the rules such as A3 which forbid bathing in polluted rivers say that one must not bathe "in them" (*tāsu*), one may draw water *from* them and bathe in that water, and thereby incur no fault : तास्वित्यभिधानादुद्धृतोदके न दोष इति प्रांचः)

Taking into account all of these exemptions, it is apparent that these restrictions do not have much practical effect. Since a river near one's dwelling place is fully exempt from pollution, the rules will have no effect as long as one remains at home. They would take effect, then, only when one travels, and especially when one goes on a pilgrimage, of which bathing in holy rivers is a major purpose. But a pilgrimage in the rainy season when these rules are in effect would be unusual, that being the least desirable season for travel. And even if one did go on pilgrimage during the rains, the major holy rivers such as the Ganges, which are the goals of many pilgrimages, are for the most part specifically exempted. Therefore even if one were concerned to observe the rules of pollution, because of the permitted exceptions these rules would have little practical effect and would not much restrict one's daily life or religious practice.

On the other hand, it must be noted that the strict interpretations of Caṇḍeśvara in the *Gṛhastharatnākara* would not be devoid of practical effect. Since he denies the validity of either the full or partial exemptions of the Ganges and other rivers, his interpretation would effectively rule out any pilgrimage during the rainy season. It is perhaps significant that he cites as grounds for this strict interpretation the fact that authoritative people do not accept the validity of these exceptions (p.198). Elsewhere too (p.198), he cites 'traditional practice' (*sampradāya*) in connection with rules of menstrual pollution. Caṇḍeśvara's remarks would seem to indicate that there was at least one tradition of strict interpretation and observance of the rules of 'Nadīrajodoṣa' and complete avoidance of menstrually defiled rivers. But he is distinctly in the minority on this point, and it appears that on the whole the matter of menstrual pollution was of more theoretical than practical importance.

Part IV : Symbolic Significance of 'Nadīrajodoṣa.'

1. The Nature of the Pollution

As Kane and other modern writers (cited above in Part I.3) have pointed out, the terms *rajas* and *rajasvalā* which are applied to rivers in the rainy season have a double meaning. Kane (*op.cit.*) vol. II, part 1, p.660 says that "in the months of Śrāvaṇa and Bhādrapada all rivers are full of mud (*rajasvalā* is used in a double sense)." Rangaswami Aiyangar (*op.cit.* p.7) is more explicit : "When their [the rivers'] waters get muddy after heavy monsoon rains, their appearance suggests that they, like women, are *rajasvalāḥ* (full of dirt, or in their ('courses')."

Gharpure (*op. cit.* p.215 note 2) remarks : " *ajasvalāḥ, retovahāḥ*—both mean containing dust, or sand.[5] The words have a double meaning, and when used in regard to a human being, they mean the menses, and therefore not to be touched or contacted in any way, as is the case with a woman in her monthly course."

We have already shown above that the pollution of rivers during the rainy season noted in earlier Sanskrit texts referred only to the earth carried off by the fast-flowing currents : that is, *rajas* in the sense of 'mud'. Later on, apparently in medieval times, this physical impurity came to be symbolically associated with a seasonal 'menstrual flow' of the female rivers, and rules were formulated to prohibit bathing in these 'menstruous' (*rajasvalā*) rivers, just as intercourse with a menstruous woman (*rajasvalā*) is prohibited.

These rules, however, were framed in such a way that, as we have seen, their actual practical effect was minimal. They give the impression of being principally a symbolic expression of an anthropomorphic concept of rivers, the regularity of whose annual ebb and flow suggested an association with the corresponding monthly flow of the human female. Most, but not all Indian rivers are represented, both symbolically and linguistically, as feminine. However, certain rivers, such as the Son (Sanskrit Śoṇa) are personified as masculine *nada*-s, rather than feminine *nadī*-s, and since the idea of menstruation would obviously not apply to them, provision is made in verses C 3 and 4 to exempt from these rules the 'male rivers' *(nadasaṃjñakāḥ, punnadāḥ)*.

Rangaswami Aiyangar (*op. cit.*, Preface p. vi) seems inclined to try to explain the exemptions granted to certain major rivers in a rationalistic manner : "A bath in a river that is 'polluted'

---

[5] This is not accurate. *Retovaha* does not have the double meaning of *rajasvalā*, and can only mean 'carrying seed' (*retas*). *Retas* usually signifies male seed or semen, but here obviously must refer to the female seed or egg, which in traditional Indian belief is carried in the menstrual blood.

(rajasvalā)......is prohibited except in streams so big that floods cannot affect their purity". But several other types of rivers, including very small rivers, are also excluded from the prohibition on bathing, and these exemptions cannot be explained on physical grounds. Rather, we must see the concept of menstrual pollution as a purely symbolic one, and one which is cancelled by a variety of factors ; the inconsequentiality of small streams ; its symbolic inapplicability to 'male' rivers ; and, most importantly, the implicit spiritual superiority of major rivers, especially such sacred rivers as the Ganges and Yamunā. Special occasions, such as an eclipse, also overrule the menstrual defilement. *Karmapradīpa* I. 10 7-10 elaborates on this, concluding (verse 10).

> समागमस्तु यत्रैषां तत्रान्ये वह्वोऽमलाः ।
> नूनं सर्वे क्षयं यान्ति किमुतैकं नदीरजः ॥

> When (at an eclipse) all these (gods, ancestors, sages, and holy books) come together, all of the many other impurities disappear—not to speak of the mere menstrual defilement of the rivers.

This rather belittling attitude towards the menstrual impurity of rivers is a further indication of its largely symbolic significance and minimal functional importance.

In line with Rangaswami Aiyangar's attempt to interpret 'Nadīrajodoṣa' in scientific terms, it could be claimed that the prohibition on bathing in rivers during the rainy season was intended as a health measure ; for rivers in India at monsoon time are notoriously disease-ridden. But if this explanation is accepted, it would still be difficult to account in similar terms for the exemptions allowed to the Ganges and other rivers. (Nowadays every visitor to Benares is told of "scientific surveys" proving that the Ganges at Benares is miraculously free of harmful micro-organisms ; this sort of popular beliefs represents such a desire to reconcile traditional faith in the purifying powers of the Ganges with modern scientific concepts.) It is conceivable that the restrictions on bathing in the monsoon may have been originally formulated with an element of concern for sanitary conditions ; but even if this is so, such practical considerations are largely overruled by symbolic and ritual factors.

Historically, the notion of associating the muddy flow of rivers in the rainy season with menstrual blood may have been suggested by the reddish color which appears in some rivers at this time. Thus, for instance, the Brahmaputra in Assam is said to have gotten its other name, Lohita or Lauhitya ('reddish') "because of the fact that the river takes this colour during the rainy seasons when it cuts through the red soils."[6] Of course, being a male river menstruation is not attributed to the Brahmaputra (the 'Lohita' is specifically exempted in C2), but similar natural phenomena in other rivers may have originally suggested the association of *rajas* 'mud' with *rajas* 'menstrual blood'.

2. Other Instances of Menstrual Symbolism in Hinduism

Menstrual functions are attributed in Hinduism not only to rivers, but also to other 'feminine' natural entities such as the earth. During the festival of *ambuvācī* which 'announces the coming of the rains' (अम्बु वाचयति) [7], the earth is said to menstruate for three days (ऋतुमती खलु पृथ्वी वर्जयेत्त्रीण्यहानि)[7]. During this time one must not dig or plow the earth "even with the point of a pin" (न कुर्यात् खननं भूमेः सूच्यग्रेणापि शंकरि)[7] ; to do so would be, like bathing in a menstrually defiled river, the symbolic equivalent of intercourse with a menstruating woman.[8] According to a modern Bengali study,[9] *ambuvācī* is explicitly known in Orissa as *raja-utsaba*. 'the festival of mentruation.'

---

[6] Hem Barua, *The Red River and the Blue Hill* (Gauhati : Lawyer's Book Stall, 1962), p. 7.

[7] For these and other descriptions of *ambuvācī* see *Śabdakalpadruma* (Varanasi : Chowkhamba Sanskrit Series, work no. 93, 1967) vol. I, p. 88, column b.

[8] I am informed by Professor Ralph Nicholas of the University of Chicago that the prohibition of plowing during *ambuvācī* is still strictly observed in West Bengal today.

[9] Cintāharaṇ Cakravartī, *Hindur Ācār-anuṣṭhān* (Calcutta : Lekhak Samavāy Samiti, 1377 [1971 A.D.]), p. 107.

The same book[10] mentions that *ambuvācī* is especially important at the temple of Kāmākhyā, the famous *śākta-pīṭha* of Gauhati, Assam. In this connection it is interesting to note that certain tantrics of eastern India believe that the spring under the black rock in that temple, which is said to be the *yoni* of the Goddess, gives forth not water but menstrual blood during the rainy season.[11] Here again, the water associated with a 'female' natural entity is symbolically transformed into menstrual blood by association with the cyclical quality of the monsoon rains.

3. Menstrual Symbolism and the Hindu World-view.

It is difficult to avoid the conclusion that the attribution of menstrual functions to rivers, etc. is connected with the growth of tantrism. The concept of menstruating rivers appears to have originated, or at least to have become prevalent, in the early medieval period, corresponding with the rise of tantric movements. Although the tradition of menstruating rivers cannot be localized from the available sources, the parallel traditions of *ambuvācī* and Kāmākhyā are clearly east Indian, belonging to the region of Bengal, Assam, and Orissa—the longtime strongholds of tantrism in India. A pre-occupation with blood and particularly with menstrual blood, is characteristic of many tantric sects.

Thus this attribution of physical features and processes of

According to the *Kṛtyakalpataru* (*Niyatakālakāṇḍa* p. 443), the fifth day of the dark half of the month of Caitra is another occasion on which the earth is menstruous चैत्रे तु कृष्णपञ्चम्यां काश्मीरा तु रजस्वला) (The *Kṛtyaratnākara* of Caṇḍesvara Ṭhākkura (Calcutta : Bibliotheca Indica work no. 237, 1924) p. 532 glosses *kāśmīrā* as *dharitrī*, 'earth.')

10. Cakravartī, *op. cit.*, pp. 206-7.

11. Cf. Agehananda Bharati, *The Tantric Tradition* (New York : Anchor Books, 1970), p. 260.

the human body to natural bodies such as rivers can be interpreted as an aspect of the fundamental tantric identification of the microcosm of the human body and the macrocosm of the universe ; it is, in fact, a perfect reflex of the identification of the rivers of the earth with the 'nerves' *(nāḍī)* of the body which is frequently found in tantric literature. In the old Bengali *Caryāpadas*, Gaṅgā and Yamunā are code words for the *āli* and *kāli*, or *īḍā* and *piṅgalā*, the principal *nāḍī*-s of the body.[12] A *dohā* of Saraha[13] also locates these rivers in the human body : "Here [in my own body] is the Yamunā, river of the gods, and here is the ocean-like Ganges." In the tantric physiology of the Bengali Bauls, not only are the *nāḍī*-s referred to by the names of rivers, but they are also believed to be the channels through which the menstrual blood flows. A Baul song of Gosāi Gaur says :

> "Woman is Gaṅgā, Yamunā, and Sarasvatī.
> Every month the flood tide comes to the *triveṇī* confluence,"[14]

where Gaṅgā, Yamunā and Sarasvatī symbolize the *īḍā*, *piṅgalā*, and *suṣumnā nāḍī*-s, and 'flood tide' refers to menstrual flow. Although this is a relatively modern source, the tantric principles symbolized in the Baul songs represent an unbroken tradition from medieval times. In view of the striking parallel of the association of rivers with menstruation in tantric doctrines, it seems undeniable that the corresponding notion in *dharmaśāstra* must have had tantric origins.

In various cultures the act of plowing has been symbolically interpreted as sexual intercourse with the earth,[15] just as we have seen in the case of the prohibition on plowing during

---

[12] See Atindra Majumdar, *The Caryāpādas* (Calcutta : Naya Prokash, 1967), Caryā XIV (p. 48) and note 1 (p. 49).

[13] *Dohā* no. 49, in M. Shahidullah, *Les Chants Mystiques de Kāṇha et de Saraha* (Paris : Adrien-Maisonneuve, 1928), p. 143.

[14] Recorded and translated by Carol Salomon.

[15] Mircea Eliade, *Myths, Dreams, and Mysteries* (New York : Harper and Row, 1967), p. 138.

ambuvācī. There are also instances in other cultures of rivers being symbolized as the earth's vagina.[16] But the attribution of human female physiological functions such as menstruation to rivers and other natural bodies appears to be a uniquely and peculiarly Indian phenomenon. On the one hand it reflects the dominant value of water, and especially of rivers in the symbolism of Hinduism as a whole. On the other hand, it is characteristic of tantric ideas and values, including the identification of the universe and the human body, and a fascination with the procreative power of the female principle in both its natural and human forms, especially as manifested in menstrual blood. The widespread adoption of the notion of menstruation of rivers into medieval *dharmaśāstra* literature may therefore be taken as an instance of the infiltration of tantric principles and practices into orthodox Brahmanical Hinduism.

---

[16] *Ibid.* p. 169.

J. DUNCAN M. DERRETT, SCHOOL OF ORIENTAL AND AFRICAN STUDIES

WHAT THE DHARMAŚĀSTRA HAS TO SAY ABOUT DOWRY

In my *Death of a Marriage Law*[1] I remarked casually that the commentaries ignored Dowry. Dr. Heramba Chatterjee has opined that the *śāstra* has nothing to tell us about 'dowry to be given to the future husband of a girl'.[2] The only person to claim that he discovered Dowry in the *śāstra* is L. Sternbach,[3] and he based the discovery upon a conception of return of presents, or even of brideprice originally emanating from the bridegroom or his family, as 'commented upon in a beautiful passage in the Mahābhārata.[4] This is very odd, since Dowry is a ubiquitous topic of Hindu marriage-customs, and when R. Jaganmohan Rao recently followed Sternbach (somewhat incautiously ?) he was merely responding to the very ordinary supposition that such a thing *must* find a place somewhere in the *dharmaśāstra*. How could so momentous a thing be overlooked ? Kane is curiously silent about it. If we look in the indexes of Kane's *History of Dharmaśāstra*, or of the works of Golapchandra Sarkar Sastri and Gooroodas Banerjee, not to speak of more recent textbooks on Hindu law, we find no reference to Dowry. How odd ! Kane does indeed speak very scathingly of the Dowry Prohibition Act, 1961.[5] As well he might. But that does not lead him to enlarge further on the subject. Why ? R. Jaganmohan Rao writes violently and almost incoherently about the dowry-problem.[6]. Not a word is raised in support of the dowry system, and attacks upon it, as upon other aspects of the traditional Hindu marriage, are vocal and continuous from the side of the upper-class and upper-middle-class of the elite. In this they are championing their less evolved compatriots' cause, for they themselves are gradually developing a style of marriage in which dowry, as such, does not figure.[7] Apart from Sternbach an author whom Sternbach almost certainly knew did take the trouble to insinuate the word 'dowry' into his translations of certain Sanskrit terms as they figure in commentatorial literature : that is Ganganath Jha.[8] He was prepared to allow it to be thought that Dowry existed to the knowledge and with the connivance of *dharmaśāstra* authorities of the centuries prior to Muslim rule. No one seems to have taken him up on it.

---

[1] New Delhi, Vikas, 1977, 62.

[2] He is confining himself, in the context, to the *saṃskāra* of marriage. *Studies in the Social Background of the Forms of Marriage in Ancient India* I (Calcutta, Sanskrit Pustak Bhandar, 1972), 60.

[3] *Juridical Studies in Ancient Indian Law* I (Delhi, etc., Motilal Banarsidass, 1965), 365-6 : see also ibid., 412.

[4] The correct reference is in fact MBh. XIII 46.1-4.

[5] Kane, *Hist. Dharm.* V/2 (1962), 1676.

Now Dowry is regarded as a pernicious thing. and, as I said, there are no two views about it. It is a social evil. But it is a vicious circle, for no father of a marriageable daughter wishes to be the first to break out of it, especially if he has sons whose marriages must also be arranged. Dowry as an institution degrades both sexes. The more educated, the better placed, more handsome and more senior sons of a well-to-do family can expect very large sums or presents in kind from the families of their eventual brides, and so they are virtually put up for auction. The less well educated, less well favoured, less senior daughters of a less successful family may have the greatest difficulty in getting married even with a substantial dowry. The auction works entirely against their interests. Complaint is not in fact made (as we might expect) that stupid and 'black' girls get marvellous, clever, Apollo-like boys by simply buying them. It is odd that we never hear this alleged against the system. But what we do hear, and hear repeatedly, particularly in the courts, is that absurd promises of dowry by girls' parents, into which they have been led by the 'auction' referred to above, catch up with their unfortunate daughters, who once in their parents-in-laws' homes, suffer frightfully, starved, beaten and otherwise mishandled, in order to extort the balance of the agreed dowry, or even to extort more than was agreed. Matrimonial disharmony created, let alone fomented, by the husband, or more often by his family, because of failures to pay the dowry or enough by way of dowry, is exemplified very often,[9] and instances find their way into popular literature.[10] Self-consciousness on the subject of Dowry is not something new. Hindu writers—and Kane was one[11]—have taken satisfaction from the thought that the reverse process, namely the bride-price, was disapproved by the *smṛtikāras*, and that Hindu castes determined from time to time not to take money for their daughters, i.e. not to sell their issue.[12] It is all too easy to believe that the *śāstra* took no notice of Dowry because Dowry was an ugly excrescence of which decent Hindus ought to be ashamed.

---

[6] R. J. Rao, 'Dowry system in India—a socio-legal approach to the problem,' *J. Ind. Law Inst.* 15/4 (1973), 617-25. He fails to notice what the objects of the system were.

[7] Rama Mehta, *Divorced Hindu Woman* (New Delhi, Vikas, 1975).

[8] G. Jha, *Hindu Law in its Sources* II (Allahabad, Indian Press, 1933), 52, 57-8 ; the same, *Vivādachintāmaṇi of Vāchaspati Mishra* (Baroda, Oriental Institute, 1942), 61.

But this does not dispose of the topic. As a matter of fact Dowry does figure in the *śāstra*, and has done so for a very long time. It is handled there in the same sly fashion, half-heartedly, shamefacedly. The reason is not explained (as usual). Probably our guess may be right. The same reason which urges parents to equip their daughters with finery and a substantial dowry dominated, then much as now, though not necessarily to the same dramatic extent when the bridegrooms' powers of earning were much more uniform than they are now. The *śāstric* authors knew that the dowry-system operated to the disadvantage of girls from some families, but since in those days the personal qualities of the little girls were considered only very superficially, and their value in marriage was not appreciated as fully as in a society in which spouses are chosen for their temperamental compatibility, the fact that a particular girl would fail to marry into a particular family because her parents could not raise a sufficient dowry was not a matter which any precept of *dharma* could reach. It was a charitable act to give in marriage girls who had no dowries. Beyond that there was nothing much that could be said.

---

[9] Derrett, 'Sociology and family law in India,' in G. R. Gupta, ed., *Main Currents in Indian Sociology* II. *Family and Social Change in Modern India* (New Delhi, Vikas, 1976, 47ff, esp. p. 54. The same, *Critique of Modern Hindu Law* (Bombay, Tripathi, 1970), 293 (‡ 375). Also *Kulbhushan* v. *Rajkumari* (1970) 2 Supreme Ct. Weekly Rep. 856.

[10] K. L. Gauba, *Meena Tandon's Honeymoon and Other Noted Cases of Marriage and Divorce* (Delhi, Vikas, 1971), ch. 10.

[11] *Hist. Dharm.* II/1 (1941), 505-8, 519, 525. Heramba Chatterjee, op. cit., ch. 7.

[12] D. S. Punia, 'Dowry system in Ancient India,' *Bharata Manisha* 1/4 (1976), 28-32.

The picture which is to be found in the *śāstra* is fairly simple, and almost without complications (surprisingly).

I. *The duty to deck the girl at her marriage*

Manu III. 27 आच्छाद्य चार्चयित्वा च श्रुतिशीलवते स्वयम् ।
आहूय दानं कन्यया ब्राह्मो धर्मः प्रकीर्तितः ।

Yājñavalkya I. 58 ब्राह्मो विवाह आहूय दीयते शक्त्यलंकृता ।
तज्जः पुनात्युभयतः पुरुषानेकविंशतिम् ।

From this it is clear that the father of the bride is bound to adorn her to the best of his ability. One would naturally suppose that the ornaments become her *strīdhana*, i.e. absolute property, and there is, after all, a known category of *strīdhana*, which would apply to them.[13] However, it is of interest that Medhātithi understood the text of Manu to refer to an adornment of both bride *and* bridegroom, and this implies that presents of adornments are to be made to the bridegroom.[14]

---

[13] Kātyāyana (ed. Kane, Bombay, 1933), 894-5.

[14] एतेनाच्छादनार्हणेन कन्याया वरस्य चान्यतरसम्बन्धे प्रमाणाभावाद् उभयोपयोगः कार्यः ।

The purpose of this adornment, and the provision of trinkets and other solid valuables for the young bride, is explained in Manu[15] and in the same Mahābhārata passage. If she is 'honoured' in this way she will be welcome to her husband, who will be father of her children. Odd as this seems at first sight, it entirely agrees with modern experience. A bride whose finery and dowry are inadequate by the standards of her mother-in-law and sisters-in-law is penalised, and maltreated, and her relationship with her husband is seriously affected thereby. The jewellery is a continuous reminder of the status and wealth of her family and makes her herself a welcome person. Much as we regret this apparently absurd criterion for being welcome, it is a fact that in an age when the personal qualities of a bride were overlooked, the presence or absence of sufficient wealth would serve as an indication of her natal family's estimation of the status of the bridegroom's family, and thus the marriage itself would rankle if the least deficiency could be detected. I can support this from my own observation.

II. *Acquisition of wealth by the husband with his wife.*

The commentator Rāghavānanda says plainly that the consent of the bridegroom to the match may be achieved with property, etc.[16] In other words a promise of a present may induce him to agree : this is obviously a casual allusion to the dowry-system as known in Rāghavānanda's own time and place. The marriage is not affected, from the *dharmaśāstra* point of view, by any such agreement, and therefore it does not figure in the portion of the *śāstra* dealing with the *saṃskāra* of marriage. That any such agreement should be an essential of the business, as Sternbach makes out, is not admitted, at any rate in this chapter, and I suspect that it never was an essential, except perhaps *de facto* in terms of any sub-caste's usage for the time being. I do not doubt but that someone may have suggested that the payment of dowry was *sadācāra*, but whether it really came within that concept (which normally relates to marriage ceremonies, etc.) I believe I may doubt. Now we come to the concept of "wealth (acquired) with the wife".

---

[15] Manu III. 55-62. L. Rocher, Sternbach Volume (1979), 210.

[16] Though property figures in the match-making, *dharma* is the object, and therefore the *brāhma* form is dharmic : ब्राह्मे च धनादिभिरभिसन्धित्वाद् ब्राह्मः धर्मो धर्मैकहेतुत्वात् । '(V. N. Mandlik, *Mānava-dharma sāstra* I, 1886, 296).

Manu IX. 206	विद्याधन तु यद्यस्य तत्तस्यैव धनं भवेत् । मैत्र्यमौद्वाहिकं चैव माधुपर्किकमेव च ॥
Yājñavalkya II. 118	पितृद्रव्याविरोधेन यदन्यत्स्वयमर्जितम् । मैत्रमौद्वाहिकं चैव दायादानां न तद्भवेत् ॥
Prajāpati[17]	विद्याशौर्यश्रमैर्लब्धं स्त्रीधनं माधुपर्किकम् । मैत्रमौद्वाहिकं भ्रातुर्भ्रातृभिर्न विभज्यते ॥
Nārada XIII. 6	शौर्यभार्याधने[18] चोभे यच्च विद्याधन भवेत् । त्रीण्येतान्यविभाज्यानि प्रसादो यश्च पैतृकः ॥
Kātyāyana 879-81[19]	यल्लब्धं दानकाले तु स्वजात्या कन्यया सह । कन्यागतं तु तद्वित्तं शुद्धं वृद्धिकरं स्मृतम् ॥ वैवाहिकं तु तद्विद्याद्भार्यया यत्सहागतम् । धनमेवविधं सर्वं विज्ञेयं धर्मसाधकम् ॥ विवाहकाले यत्किंचिद्वरायोद्दिश्य दीयते । कन्यायास्तद्धनं सर्वमविभाज्यं च बन्धुभिः ॥
Vyāsa[20]	विद्याप्राप्तं शौर्यधनं यच्च सौदायिकं भवेत् । विभागकाले तत्तस्य नान्तेष्टव्यं स्वरिक्थिभिः ॥
Bṛhaspati XXVI. 46[21]	पितामहपितृभ्यां च दत्तं मात्रा च यद्भवेत् । तस्य तन्नापहर्तव्यं शौर्यभार्याधने तथा ॥

---

[17] At Devaṇṇa-bhaṭṭa, Smṛticandrikā, 642 (Mysore edn.)

[18] Jīmūtavāhana, Dāyabhāga, 107 : भार्याप्राप्तिकाले लब्धं औद्वाहिकं

[19] Ed. Kane, text 106-7, trans. 311. L. S. Joshi *Dharmakośa, Vyavahāra-kāṇḍa* I (Wai, 1938), 1228 and 1231 (Vyāsa).

[20] *Dharmakośa*, 1231. Some authors, e.g. Madanaratnapradīpa, 334, would take सौदायिकं merely as a form of स्त्रीधनं.

[21] Ed. Aiyangar, 203 ; *Dharmakośa*, 1223.

The chapter in which all these texts come is not the chapter on marriage, but that relating to partition of joint-family property. The key words are almost always glossed 'acquired at the time of marriage',[22] 'taken from the father-in-law's house',[23] 'given by father-in-law, etc.'.[24] There is a small group of glosses which take the key words as *strīdhana*.[25] This is ambiguous. The *dharmaśāstra* technical term, *strīdhana*, means, as is well known, the personal property of the woman, over which her male relatives have no right of disposal. And no doubt it is in that sense that those glossators use it. However, we cannot lose sight of the fact that *strīdhana* was used in another sense, viz. property acquired by a male with his wife, i.e. at his marriage and from her family, i.e. dowry. Evidence for this use is sparse, but it exists.[26] It is just possible that one or more of our glosses could be so understood.

The way the commentators handle these texts leaves no manner of doubt but that they knew that men acquired property at their marriages and in connection with their wives. There is no Sanskrit word for Dowry, but these terms are in lieu of it. Kātyāyana's rather pathetic attempt to distinguish between them may not convince everyone. And if these terms were so widely current in the period of the *smṛtis*, including a

---

[22] Nandana on Manu, ubi cit. Or by reason of marriage: Parāśaramādhavīya II, 558. Medhātithi has an alternative explanation (for variant reading see *Dharmakośa*, ubi cit., 1211): अपरे उद्वाहनिमित्तेन यतस्तल्लभ्यते Jagannātha Tarkapañcānana, Vivādabhaṅgārṇava (Colebrooke's Digest III. 364, 369). Rāmacandra on Manu specifies 'household equipment or furniture,' which would appeal to our contemporaries.

[23] Bhāruci on Manu ubi cit. Medhātithi likewise.

[24] Aparārka on Yājñ. II. 117. Sarvajñanārāyaṇa: भार्याबन्धुभ्यो लब्धम्

[25] Bhavasvāmī on Nārada, sup.

[26] Derrett, *Religion, Law and the State in India* (London, Faber, 1968), 412. Maskari cited by Derrett, *Essays in Classical and Modern Hindu Law* II (Leiden, Brill, 1977), 27 n.64. Cf. *cītanam* in the Tamil customary Law of Jaffna, and *strīdhana* of Koṭṭai Velālar or Śrīvailkuṇṭam (P. Ramanathan, *B.S.O.A.S.* 32, 1969, 339). D. C. Sircar, *Indian Epigraphical Glossary* (1966), 325 (refs.).

smṛti as old as Yājñavalkya, we are forced to admit that the dowry-system was, at least in embryo, present even then.

For why otherwise should this term figure in the section of the *śāstra* dealing with impartible property ? Property is impartible for one of three reasons : (i) it is by its nature impartible, e.g. a well or a servant-girl ; (ii) there is a custom of impartibility, e.g. the regalia of a *rājya* ; or (iii) it would be impolitic, inequitable, or improper to partition it. The best-known example of the third is the one which takes up the space in the text-books, viz. *vidyādhana*, 'gains of learning'.[27] This particular heading obtained widespread notoriety. Why has *bhāryādhana* (dowry) slipped into obscurity ? Let us first consider why *vidyādhana* has made such a noise. The presuppositions relative to *vidyādhana* are valid also for *bhāryādhana*.

The joint-family provided the nourishment, education, and background from which a male member went forth and achieved that of which, in terms of his caste and personal potential, he was capable (Bṛh [Aiy] XXVI. 20). At a very early stage in his career he opted to invest his intellectual powers in acquiring *vidyā*, and later opted to utilise it, typically as a *purohit* or *paṇḍit*. Even in quite recent times the old logic has made itself felt.[28] If the family has provided the means whereby the *vidyā* could be acquired it ought to share in the scholar's earnings. However, long before our *smṛtis*, a different voice was heard. Idle or incompetent siblings would be improperly encouraged in their idleness if they had a right to live off the earnings of the devoted and the competent.[29] Thus by something possessing what I may call the aroma of paṇḍit-'legislation' the view was accepted, and proclaimed as *dharma*, that the acquirer had the *right* (in our terms) to retain his self-acquisitions by way of *vidyā* if it came to a partition. I must emphasise those last words. *Dharma* could be advanced by partition ; and yet at the same time the prestige and standing of the family was enhanced by harmonious joint living over generations. If a partition did not take place even *vidyādhana* could be consumed within the family, and no one might be able to trace it or its produce, if any. The whole concept of *vidyādhana* existed in order to encourage individual devotion to learning in a family, whose internal relations were such that a partition could be anticipated as a matter of course. Meanwhile the basic principle remained untouched, that what was earned by or with any detriment to the ancestral assets, however small, was partible.[30] And if it was partible at a partition it could be enjoyed jointly prior to that.

---

[27] Kane, *Hist. Dharm.* III (1946), 577-85 ; N. R. Raghavachariar, *Hindu Law, Principles and Precedents*, 6th ed. (Madras, M.L.J., 1971), 285-7 ‡‡ 257-9.

[28] Derrett, *Introduction to Modern Hindu Law* (Bombay, O.U.P., 1963), ‡ 547. p. 337 n. 1 (a case of 1956).

[29] Gautama XXVIII. 28 ; Kātyāyana, 875 ; Nārada XIII. 11. G. Jha, *Hindu Law in its Sources*, II, 53,55.

Now, as is fairly well known, not all schools of thought accepted this view of Yājñavalkya's text. It was quite possible to construe it differently. It was possible to read the first line as saying that additional acquisitions made without detriment, etc., were impartible (and separate, see *v.* 118d) ; and that *maitram* (gifts from a friend) and *audvāhikam* (dowry) would be in all cases impartible, even if the source, historically, of those presents, had been expenditure on the part of the recipient's family. To us this seems a common-sense explanation. But, against the background I am discussing, the opposite view commends itself. The family should be able to share in gifts from friends and dowries acquired by its members *unless* it could be shown on the acquirers' behalf that those gifts were completely unrelated to expenditure from the paternal funds. This is the view taken by Vijñāneśvara in his *Mitākṣarā*.[31] The psychology is plain. Presents from friends, and dowries, do not arise—I mean, in such a society—out of the goodheartedness of affectionate persons. They are part of a pattern of exchange. Not, perhaps, after the style of the South Sea Islands. But there is the most careful watch on giving, and reciprocity is important. The family's chest has to supply presents for 'strangers', and therefore receives their, or their relations' return-presents. Marriages take place within a small number of families. In order to get a girl married the family must find her dowry, ornaments, and marriage expenses, and to this fund members of the family will contribute their earnings. When the time comes for those same members to get married the property they acquire from their own 'in-laws' would normally go into the same chest – as it still does in so many levels of Hindu society.

---

[30] See R. Dhavan, *The Supreme Court of India, A Socio-Legal Critique of its Juristic Techniques* (Bombay, Tripathi, 1977), 285-305.

[31] Commenting on Yājñ. II. 118 (p. 204 of the Nirṇayasagara ed.). Colebrook's divisions : I. iv. 6-15. Pratāpa-rudra, Sarasvatī-vilāsa (ed., trans. Foulkes), ‡‡. 178-188.

The principle which urged those whom I vaguely called 'legislators' to lay down as *dharma* the impartibility of *vidyādhana* operated similarly with regard to *bhāryādhana* or *audvāhikam*. Where, as must sometimes have happened, a bridegroom was invited in the *brāhma* form to accept the daughter of an admirer, with whose family there had been no previous connection, the dowry was not, in any sense at all, purchased by the bridegroom's family's efforts. Vijñāneśvara plainly says that such a 'purchase' could well occur in an *āsura* marriage, so. if the bridegroom's family paid less for the girl than was handed back to him as *bhāryādhana*. Whether this is quite apt I cannot say : I have a suspicion that he has chosen a tactful illustration, rather than a practical one. It would have been more to the point to explain to his readers (had they needed the explanation) that *bhāryādhana* is given as an example of property exempt from partition because the opposite position gave members of the family the chance to profit from their more eligible sibling's marital prospects. Just as it is wrong to allow idle brothers to make capital *at a partition* out of the earnings in scholarship and the like of their ambitious and talented sibling, it is wrong to allow them to participate in his price in the marriage-market. We know that the size of a dowry today is directly related to his earning capacity, and to skills which would come within the definition of *vidyā* in modern terms.

So here we have Dowry in the *dharmaśāstra* and is fair to ask whether any particular attitude is taken towards it. Apart from the partition problem it ignores it—that it is to say except for another title of the *śāstra* which simply confirms what I have been saying. In the Dattāpradānika section, which deals with improper gifts, gifts which in unspecified circumstances could be set aside by courts, we find certain later texts which clearly include Dowry within the list of *prima facie* invalid gifts. Kane has not done justice to this section, which he handles perfunctorily. The digests however plainly place सौदायिकं and वैवाहिकं in a special category. The basic rules on 'ungivability' do not in fact include the property a man acquires with his wife, nor for that matter do they include his wife's *strīdhana*. This was not necessary, since X could not give away the property of Y. However, it was thought advisable (Bṛhaspati [Aiy.] XIV.6) to lay down that one (e.g. the head of the family, or the husband) could alienate सौदायिकं only with the wife's consent. It is literally possible to take that word as a technical term for a particular type of *strīdhana*, but the commentators (e.g. Aparārka at II. 175 and other authors that follow him) explain it as 'obtained in, or because of, marriage'[32] and the consent of the wife frees the asset for alienation, sc. by her husband.[33] The item is included along with two other types of property by Bṛhaspati : ancestral property, and gains of valour. In the former case the consent of coparceners, in the latter that of the soldier validates the transfer. Granted the nature of the joint family these three types of asset would not be entirely inalienable ; but the whole purpose of Dowry would be frustrated if it were capable of being *given away* during the period prior to the husband's severance and partition. A wife must in any case give her permission for her *strīdhana* to be given (Vyāghra at Maskarī XVIII. 1). But as for her dowry I repeat that, like ancestral property, it was subject to a basic restriction (Bṛhaspati XIV. 5cd) which could be lifted with consent, as clearly explained by Nandapaṇḍita, Keśavavaijayantī V. 179 (at p. 148).

---

[32] Madanaratnapradīpa, 209. An interesting study: Caṇḍeśvara, Vivādaratnākara, 130-1.

[33] The distinction made at Vācaspati-miśra's Vivāda-cintāmaṇi, text (1898), 58-9, trans (G. Jha) (1942), 61, is illuminating: सौदायिकं कन्याभोग्यतया विवाहे यल्लब्धम् । तत्रैव पत्या दीयमाने पत्न्यनुमत्यपेक्षा न्यायसहत्वात् न तु स्वभोग्यतयापि प्राप्ते परिभाषीयादौ स्मृतेरदृष्टार्थत्वापतेः । If this has the effect of allowing the husband to dispose of all dowry, other than that settled expressly on the wife, at his pleasure this may indirectly place too much power in the hands of his parents. The Sanskrit inscription of about 670 A.D. at Phnom Penh (11.13-14) at G. Coedès, *Inscriptions du Cambodge* V (Paris, 1953), 47 states that the donor gave to the deity all his lawfully acquired wealth acquired without the use of *strīdhana*.

The ire expended on sales of daughters does not figure here,[34] nor on sales of children (sc. into slavery !). The bridegroom, after all, is induced (as Rāghavānanda says) to agree to the match, not 'sold'. *Vara-dakṣiṇa,* a term often heard,[35] is not in fact a śāstric expression. The dowry was intended to enable a husband eventually to set up on his own, and rescue his wife, if necessary, from troublesome 'in-laws'. No wonder *bhāryādhana* was impartible !

III. *The legal position.*

The husband's and wife's co-ownership of property is long forgotten.[36] The śāstric concept of 'givability' is long since obsolete. But the right of Dowry to escape partition ought still to be good law. The śāstra has not confined itself to discussing the rights of members when a partition has been demanded. 'Gains of learning' have been beaten threadbare : why have we heard literally nothing of *bhāryādhana* in this connection? There is a substantial pile of authors to whom one would go for information.[37] Not all of them will condescend to speak on the point. In fact there are two cases which handle this subject : one in 1876 and one in 1907.[38] It is notorious that the litigious Hindus, whose family litigation provides, in effect, such massive textbooks, usually litigate every minute point of Hindu law scores of times over. Yet this question has figured only twice. The standard explanation would be that since the Sanskrit texts were plain there was no hope of such litigation reaching a High Court. However there has been plenty of litigation regarding *vidyādhana* even in those respects in which the texts were clear.

---

[34] Note that the relatively modern Mahānirvāṇatantra (on which see Derrett, *Essays,* sup., II, 197ff.) does not consider dowries (XII. 97-101), but animadverts on sales of children, male and female, to impotent persons : XI. 84 (the commentary reveals errors in Arthur Avalon's trans. at p. 351).

[35] Used by R. J. Rao (sup.). see also Derrett, *Introduction,* sup., ‡‡ 218-19 (a case of 1946), Narayana V. Parvathi (1944) 36 Cochin 16.

[36] Subject to what is said by me at Supreme Court Journal 1967, vol. 1, journal section, 55.

Light is thrown on this mystery by the fate of the Dowry Prohibition Act. There has been, to my knowledge, only one significant case between Hindus on this topic, and that too approaching in an indirect way.[39] The question was whether a dowry which had been paid contrary to the Act could be recovered on the breakdown of negotiations. The reported cases are not between Hindus at all.[40] Part of the explanation may be that the Act allows presents, provided they are not demanded or paid in consideration of the marriage.[41] Irrespective of schemes to enhance the penalties, and even redesign the Act, by State Legislatures, the well-meant provisions languish for non-use. They are admitted to be a failure. The families have a constant interest in negotiating marriages, and the dowries actually paid are intended to secure or enhance the bride's status or security in her new home. If husbands are so weak (they often are) as to be unable to keep their wives' dowries out of the clutches of their relations they cannot prevent a dowry being negotiated for, and there can be no question of their prosecuting their own relations for breach of the Act. If they have a mind to keep the dowry to themselves they must demand partition immediately the dowry is received. Once again they have no interest in a prosecution, and their 'in-laws' can hardly have an interest in prosecuting them for taking the dowry since, upon such a partition, it is clearly going to fulfil its very purpose. That may well be what Kātyāyana meant by वृद्धिकरं and धर्मसाधकं ! At a partition no other member of the family can claim to share in the dowry, not merely because the Sanskrit texts are clear, but more relevantly because as soon as a partition takes place the many and onerous mutual responsibilities between the siblings are ended for good and ill. They will not contribute to the marriage expenses of the parting member's daughters ; and by definition he cannot have his partition without contributing to his unmarried sisters' marriage-expenses and dowries, if any.[42] That he could conceivably utilise his wife's dowry for such a purpose would be a matter for him to decide, and his parents-in-law would regard the arrangement as cheap at the price.

---

[37] E. g. Raghavachariarcit. sup., 283 (‡ 255.)

[38] *Adhar Chandra* v. *Nabin Chandra* (1907) 12 Cal. Weekly Notes 103 : *Beharee* v. *Lall Chunder* (1876) 25 Weekly Rep. 307. In the latter case the court quotes Śrīkṛṣṇa on the Dāyabhāga VI. 1.9 : 'property received from a father-in-law on account of becoming his son-in-law'.

[39] *Rayudu Pallamsetti* v. *D. Sriramulu* (1967) 2 Andhra Weekly Rep. 465.

[40] *Thomas* v. *Sarakutty* 1975 Kerala L. T. 386 ; *Abbas* v. *Kunhipattu*, ibid. 604.

[41] Derrett, *Introduction*, cit. sup., 218.

IV. *The future*

I do not see an end to the dowry-system. As long as the joint-family system survives as a sociological fact (irrespective of what happens to it at law) the purpose, not less than the possibility, of these gigantic dowries will survive. It is not an accident that those elite classes that are dispensing with dowries are also those in which no trace of the traditional Hindu joint family remains.[43] They are also families in which marriage is beginning to be unstable, although India affords *no place* for the separated or divorced woman. The law will have to develop a special type of settlement in which the parents or guardians of a girl settle property on her husband, for him to enjoy the usufruct, the corpus to revert to the wife on a separation or divorce taking place. This would be a distinct step forward in securing the wife's position, and is anticipated by some of the customs of Sūdra classes in South India.[44]

---

[42] Jīmūtavāhana, *Dāyabhāga* (Colebrooke's divisions :) III. ii. 34-41 ; Vijñāneśvara, *Mitākṣarā* (ditto) I. vii. Kane, *Hist. Dharm.* III, 619-20. For this purpose the entire property may have to be alienated : *Bhagawati Shukul* v. *Ram Jatan* (1923), 45 All. 297 (Indian Law Reports ser.).

---

[43] Rama Mehta, cit. sup.

[44] I draw attention to *Punukollu Parandhamayya* v. *P. Navaratna*. All India Reporter (A.I.R.) 1949 Mad. 825 ; *N. Venkata* v. *T. Bhujangayya* A.I.R. 1960 A.P. 482. Cf. *Muthupalaniappa* v. *Alagamai* A.I.R. 1961 Mad. 438, 440-1.

CASES CITED

Abbas v. Kunhipattu 1975 Kerala Law Times 604 p. 190

Adhar Chandra v. Nabin Chandra (1907) 12 Calcutta Weekly Notes 103 p. 190

Beharee v. Lall Chunder (1876) 25 Weekly Reporter 307 p. 190

Bhagwati Shukul v. Ram Jatan (1923) Indian Law Reports 45 Allahabad 297 p. 191

Kameswara Sastri v. Veeracharlu (1910) Indian Law Reports 34 Madras 428 p. 99

Kulbhushan v. Rajkumari (1970) 2 Supreme Court Weekly Reporter 856 p. 180

Lalubhai v. Bai Amrit (1877) Indian Law Reports 2 Bombay 299 p. 79

Muthupalaniappa v. Alagamai All India Reporter 1961 Madras 438 p. 192

Punulollu Parandhamayya v. P. Navaratna All India Reporter 1949 Madras 825 p. 192

Rayuduu Pallamsetti v. D. Sriramuulu (1967) 2 Andhra Weekly Reporter 465 p. 190

Thomas v. Sarakutty (1975) Kerala Law Times 386 p. 190

Venkata (N.) *v. Bhujangayya* (T.) All India Reporter 1960 Andhra Pradesh 482 p. 191

INDEX

Abbinahole, Karnataka 55
abhayaśāsana, assurance of safety 12
Abhidhānaratnamāla 129
abuse 8
adoption 43 ff., 45 ff.
adultery 11, 34-35, 106
Aesop 27
Agnipurāṇa 142
Aitareya-Āraṇyaka 103, 127
Aitareya Brāhmaṇa 91
Aiyangar, A. N. Krishna 55
Aiyangar, K. V. Rangaswami 53, 55, 153, 164, 172-174, 183
Akbar 71
Amarakośa 129
Amarasiṃha 129
ambuvācī festival 175-177 *passim*
Anantacharya, P. B. 120
Aparārka 49, 55, 150, 153-177 *passim*, 184, 188
Āpastambadharmasūtra 81-152 *passim*
Amat, Roman d' 18
Amphitruo 25
Aṃśu river 159-177 *passim*
Anjaneri plates 11
Apachi (Appāji [Sāḷuva Timma]) 27
arthaśāstra, see also Kauṭilya
  relation to *dharmaśāstra* 3, 53
āśrama 81-153 *passim*
assault 8
Aṣṭādhyāyī 107
aṣṭakulaka, an officer of the court 4
Atharva Veda 124
ātman 93
Atrismṛti 112, 113
audvāhikam, dowry 186 ff.
Aurangzeb 42
avadhūta, class of renouncer 139
Avalon, Arthur 189
Awadh 57
bahūdaka, class of renouncer 120, 122, 136, 137, 138, 140
Banerji, A. 54
Banerjee, Gooroodas 178
Barua, Hem 175
Basu, J. 100
Basu, K. K. 49
Baudhāyanadharmasūtra 81-153 *passim* Proto-B. and Deutero-B. 87-88
Baudhāyanaśrautasūtra 128
Bengal 57
Bendrey, V. S. 56
Bertoldi, Charles 16
Besse, Leon 16

Bhagavadgītā 95, 130
Bharati, Agehananda 176
Bhāruci 184
bhāryādhana 185 ff.
Bhattacharya, B. 105
Bhavasvāmī 184
bhikṣu 81, 131, 133, 135, 148
Bhogaśakti 6, 11
Biardeau, M. 112
Bose, Shivanath 67
Bourguinon d' Anville, Jean-Baptiste 17
Brandes, J. 54
Brahmaputra river 174
brāhmaṇas (brames) 13, 22, 37, 44, 69, 111 ff., 135. 147, 148, 150
Bṛhadāraṇyaka-Upaniṣad 143
Bṛhaspatismṛti 53, 54, 59, 63, 68, 71, 76, 81-153 *passim*, 183, 184, 188, 189
Bṛhatsaṃhitā 169
Bühler, G. 87, 104, 132
burden of proof 67-68
Cabos, Alban 29
Cakravartī, Cintāharan 175
Candeśvara 167, 172, 175, 188
Candrabhāgā river 162-177 *passim*
Candragupta Maurya 4, 5
Cangibouram 20
Carnate 17
cartography 17
Caryāpadas 176
Catholic Church 141
Caturvargacintāmaṇi 103
ceṭaka 66-67
ceṭī 58-63, 65, 68-73
Chanana, Dev Raj 67
Chandoga-pariśiṣṭa 153-177 *passim*
Chāndogya-Upaniṣad 82-83, 88
Chandrakanta Tarkalamkara 77, 153
Chatterjee, Heramba Nath 178
Claudianopolis 17
Clement XI, Pope 16, 17
Coedès, G. 188
Colebrooke, H.T. 184, 186, 191
counterfeiting 8
Cowell, E. B. 67
Cronin, V. 16
Cunningham, A. 71
custom 19 ff., 41
Dakṣasmṛti 117
daṇḍādhyakṣa, an officer of the court 56
Daṇḍin 4, 5
dattāpradānika, improper gifts 188
dāsa, see slave
Daśakumāracārita 4
daśanāmin 122
Dāyabhāga 183, 190, 191
debt 32, 33, 47 ff.
Delisle see l' Isle
Deo, B. 109
Derrett, J. D. M. 2, 15, 56, 98, 99, 108, 179, 184, 185, 189, 190
Devaṇabhaṭṭa 154, 167, 183
Devendiren 22

Devikā river 162-170 *passim*
dharmādhyakṣa, officer of the court 53, 60, 65, 80
Dharmakośa 183, 184
dhārmika 8, 9, 10
Dhavan, R. 186
Dīgha Nikāya 91, 94, 113, 131
Dindinger, Joseph 16
Divyatattva 79
document (see also *patra*) 44
dowry 38 ff., 178 *passim*
Dowry Prohibition Act, 1961 178, 190
Dṛṣadvatī river 159-177 *passim*
Dutt, S. 109
Eliade, Mircea 177
Elphinstone, Mountstuart 74
Farquhar, J. N. 100, 123
Fasli era 71
Fausboll, V. 67
Fernando, A. S. Mervyn 141
forced labor 7
Foulkes, T. 186
Gāhaḍavāla Jayaccandra of Vārāṇasī 13
gaṇa 53
Gaṇapāṭha 114-115
Gaṇapati, Kākatīya king 12
Ganges 157-177 *passim*
Gauba, K. L. 179
Gaur, Gosai 177
gaurīvavāṭikā 58, 62, 68-70
Gautamadharmasūtra 81-153 *passim*, 185
Gautamī river 160-177 *passim*
Gharghara river 160-177 *passim*
Gharpure, J. R. 1, 164, 166, 172
Ghosh, Batakrishna 50
Gobhilasmṛti 153-177 *passim*
Godāvarī river 165-177 *passim*
Gole, Susan 17
Gomatī river 160-177 *passim*
Gonda, J. 123, 124, 138
Govindācārya Kavikaṅkanācārya 154, 171
Govindarāja 73, 133, 167
Grandonic see Sanskrit
Gṛhastharatnākara 153-177 *passim*
gṛhyasūtras 124
guilds 13, 53
Gune, V. T. 53, 56, 74
guru 31-32
Hairaṇvatī river 159-177 *passim*
Halāyudha 129
haṃsa, class of renouncer 122, 136, 137, 138, 140
Haradatta 94, 107
Harinātha Upādhyaya 59, 64
Hemādri 103
Hermes 25
Heesterman, J. C. 116
Hijra Era 71
Hiraṇyakeśigṛhyasūtra 124
Hiraṇyakeśiśrautasūtra 128
Hiraṇyākhya river 160-177 *passim*
inheritance 38 ff., 42ff., 46ff., 145, 178-192 *passim*
Innes, L. C. 15
interest 33

l' Isle, Guillaume de (also Delisle) 17
Jābala-Upaniṣad 99, 119
Jagannātha Tarkapañcānana 184
Jāhnavī (Ganges) 157-177 *passim*
Jaiminīya-Saṃhitā 127
Jainas 109, 113, 146
Jann, Adelhelm 16
Java 54
Jayaswal, K. P. 1, 49, 53, 68, 69
Jean, Auguste 16
Jews 39, 40
Jha, G. N. 1, 68, 179, 185, 188
Jīmūtavāhana 77, 153, 168, 183, 191
Jīvānandana Vidyāsāgara 154
jīvanmukta 95, 132
Jīvanmuktiviveka 139, 140
Jolly, J. 1, 81
Joshi, L. S. 183
Kalacuri 5
Kālaviveka 153-177 *passim*
Kālidāsa 169
Kali yuga 105, 112, 142
Kāmākhyā temple 175, 176
Kamalākara Bhaṭṭa 154, 168
Kamalakṛṣna Smṛtitīrtha 154
kāmaśāstra relation to *dharmaśāstra* 3
Kane, P. V. 1, 14, 51, 65, 72, 78, 80, 81, 82, 105, 107, 112, 113, 118, 141, 142, 164, 168, 169, 172, 178, 179, 181, 183, 184, 191
Kangle, R. P. 74, 81, 100
Kānyakubja 13
Kapila 90
Karatoyā river 161-177 *passim*
Karmanda 107, 129
karmandin, renouncer 129
Karmapradīpa 153-177 *passim*
Kāṭhaka-Saṃhitā 103
Kātyāyaṇasmṛti 51, 59, 63, 66, 68, 71, 72, 75, 77, 78, 81-153 *passim*, 181, 183-185, 191
Kauṭilya 53, 66, 73-74, 81-153 *passim*
Kauśikī river 159-177 *passim*
Kautuma-Saṃhitā 127
Kāverī river 162-177 *passim*
Keith, A. B. 127
Keśava Paṇḍita 56
Keśavavaijayantī 189
Khaṇḍavalā dynasty 53
Koka river 160-177 *passim*
Krick, Hertha 116
Krishnan, Y. 149
Kṛtyakalpataru 153-177 *passim*
kṣatriyas 112, 150
kṣema, security, ultimate goal 93, 95
kula, court 53, 55
Kullūka 75, 133, 137
Kuṇḍikā-Upaniṣad 143
kuṭīcaka, class of renouncer 120, 122, 136, 137, 138, 140
Kwei-chou 17
Lakṣmīdhara 153
Lapide, Cornelius a 39
Lariviere, R. 79

Launay, Adrien Ch. 16
Laynez, Francois 16, 17
lex talionis 36-37
Licchavis 4
Lingat, R. 98, 99, 100, 107, 108, 143, 151
Lisker, Leigh 21
Lockman, John 36
Lohita river 160-177 *passim*
Lumsden, N. J. 53, 74
Madanaparijāta 144, 153-177 *passim*
Madanapāla 154, 167
Madanaratnapradīpa 183, 188
Madhusūdana Smṛtiratna 154
Maduré 16, 17, 36
Mahābhārata 111, 112, 123, 136, 146, 178, 182
Mahalingam, T. V. 13, 55
Mahānamnārcika 127
Mahānirvāṇatantra 189
Mahārāṣṭra 56
maitram, gifts from a friend 186
Maitrāyani-Saṃhitā 103, 127-128, 130
Majumdar, Atindra 176
Majumdar, B. B. 56
Majumdar, R. C. 56
Malabar 17
Mandākinī river 159-177 *passim*
manchinircani-chitou 44
Mandlik, V. N. 1, 79, 182
mahajar, see *mahzar*
mahzar 56
Mangamal (Mangammal), Queen regent of Madura 37
maniacarren *(māṇiyakkāraṇ)* 31
Manusmṛti 55, 70, 73, 79, 81-153 *passim*, 181-184
Marathas 42, 53
Marava 36
Mariadi-ramen *(Mariyātai-rāmaṇ)* 22-26
Mariyātai-rāmaṇ see Mariadi-ramen
marriage 8, 10, 19, 38, 45ff., 68, 84, 98, 101, 140, 141, 178-192 *passim*
Martin, Father Pierre 36
Maskari 184, 189
measure, units of 12-13
Medhātithi 53, 55, 79, 111, 181, 184
Mehta, Rama 179, 191
merchants 4, 5, 6, 9, 11, 12
mithyottara, denial 67
Misaru Miśra 59, 64, 79
Mitākṣarā 18, 56, 67, 68, 76, 191
Mithilā 53, 56, 57
Mitra, Priyanath 79
Mitramiśra 56, 150, 154, 168
mokṣa 81-82, 132, 133
Mookerjee, Asutosh 77
Moses 39
Motupalli pillar inscription 11 ff.
mourri 32
Mughals 42, 55, 57
Muṇḍaka-Upaniṣad 129, 131
muni 81, 131
murder 14, 36, 106
muri see *mourri*

Mylapore 16
Nandana 184
Nandapaṇḍita 144, 189
Nāradaparivrājaka-Upaniṣad 139
Nāradasmṛti 49, 55, 69, 72-75, 78, 81-153 *passim*, 183, 185
Nārāyaṇ Rām Ācārya Kāvyatīrtha 154
Narmadā river 162-177 *passim*
Nārāyaṇabhaṭṭa 154, 167
Nelson, J. H. 15, 18, 36
Nicholas, Ralph 175
Nīlakaṇṭha Bhaṭṭa 56
Nirṇayasindu 154-177 *passim*
Olivelle, Patrick 2, 83, 85, 87, 107, 117, 137, 139
oppari pirieradou 44-45
ordeals 34-36, 59, 63, 64, 75, 79
orphans 45 ff.
palaiyakkaran see palleacaren
Pali Buddhist literature 3, 4, 91, 131, 146
palleacaren *palaiyakkāraṉ* 25, 41 ff.
Pāṇini 107, 114, 122, 129, 131
paṇḍita, officer of the court 53, 59, 60, 63, 65, 76, 80
paramahaṃsa, class of renouncer 120, 122, 136, 137, 139, 140
Paramahaṃsa-Upaniṣad 139
Parāśara-Mādhava 77, 144, 184
parāśarin, renouncer 129
Pārāśarya 107, 129
pariṣad 84
parivrājaka 81, 131, 133, 135
Parjen 24 ff.
paścātkāra 52 ff.
Pāṭaliputra 5
Patañjali 115, 122, 124, 129, 131
patra, document 6, 49-80 *passim*
Paulinus a Sancto Bartholomaeo 28
Phillips, C. H. 15
Phnom Penh 188
Pibrac, Gui de Faur Seigneur de 28-29
Pitāmahasmṛti 59, 64, 79
Plautus 25
Pondicherry 15-17
possession 76-79
prāḍvivāka, chief judge 53
Prajāpatismṛti 183
Pramathanatha Tarkabhusana 153
Prāṇavamīmāṃsā 118
prānnyāya, former judgement 54, 58, 61
Pratāparudra 186
pratyākalita 68
Praveṇipustaka "Book of Precedents" 4
pravrajita 81, 113, 131, 133, 135
prostitute 4
pūga, court 53
Punia, D. S. 179
Pūrva-mīmāṃsā-sūtra 83, 113
Raghavachariar, N. R. 185, 190
Rāghavānanda 133, 182, 189
Raghunandana Bhaṭṭācārya 79, 154
Raghuvaṃśa 169

Rāmacandra 184
Ramanathan, P. 184
Rāmānuja 120
Raṅganātha Temple 55
Rao, P. Ramachandra 22
Rao, R. Jaganmohan 178-179, 189
Renou, L. 119
Ṛgveda-Saṃhitā 131
Rocher, L. 1, 66
sacrifice 7, 10, 90, 117
Saint-Vallier, Melchior Cochet de, 18
śālīna, holy householder 88, 110
Salomon, C. 177
Salomon, R. 2, 154
Sāma Veda 127
Śambhujī, son of Śivājī 56
Śaṃkara 109, 112
saṃnyāsa, *saṃnyāsin* 81, 87, 127 ff.
Saṃnyāsa-Upaniṣads; 121 ff. 136
Samonscradam see Sanskrit
Samouseradam see Sanskrit:
saṃsāra 81
saṃskāra 84, 98
saṃvid, agreement 13
Śaṅkaragaṇa, Kalacuri king 6
Śaṅkhasmṛti 59, 63
Sanskrit 27-28
Saraha 176
Śarayū river 162-177 *passim*
Sarasvatī river 159-177 *passim*
Sarasvatīvilāsa 144, 186
Sarkar, Golapchandra 178
Sarvajñanārāyaṇa 133, 184
śāsanamaryāda 6
Śatadru river 160-177 *passim*
Śatadūṣaṇī 120
Śatapaṭha-Brāhmaṇa 127-128, 130
sāvitrī 118-119
senāpati, an officer of the court 4
Setlur, S. S. 144
Sharma, H. D. 100, 107, 113, 123, 136
Shah Jahan 71
Shahidullah 176
Siṃha, Mādhava, Rāja of Khaṇḍavalā dynasty 53
Sindhu river 160-177 *passim*
Singh, Madhu, Raja of Tirhut 53
Sircar, D. C. 1-14 *passim*, 184
Śivājī 42, 56
Skanda Purāṇa 137
slave 58, 59, 61-63, 66-70, 72-74, 146, 150, 189
Smith, Graham 56
Smṛticandrikā 77, 144, 153-177 *passim*, 183
Smṛtīnām Samuccaya 153-177 *passim*
Society of Jesus 16
Sommervogel, Carlos 16, 39
Śoṇa river 160-177 *passim*
śrautasūtras 128, 130
śreṇi, court 53
Srinivasacharya, L. 77, 79
śrotriya 59, 63, 146, 148
Sternbach, L. 147, 178, 179

sthiti, ordinance 13
Stocklein, Joseph 16, 17
Streit, Robert 16, 36
strīdhana 181-192 *passim*
Śuddhikaumudī 153-177 *passim*
śūdras 112-114, 150
Śūlapāṇi 143, 150
Śukranīti 76
Sundaram, T. M. 27
Sumaṅgalavilāsinī 4
Sureśvara 111
sūtradhāra, an officer of the court 4
Taitirīya-Brāhmaṇa 95
Taittirīya-Saṃhitā 89-90, 103, 127
Tamerlane 42
Tanjore 36, 41, 42
Tarkolan 16
Thakur, U. P. 53
theft 13-14, 34, 72, 106
Tithitattva 153-177 *passim*
Tirhut 53
Tooley, R. V. 17
Tournon, Charles de 16, 17
Travancore 40
tribes 3
Trichinopoly 16
Tristhalīsetu 153-177 *passim*
turīyātita, class of renouncer 139
upanāyana 84, 123
uparāja, an officer of the court 4
uttarakulika, class of official 8
Vācaspati Miśra 68, 179, 188
Vaijayantī, comm. on *Amarakośa* 129
Vaikhānasadharmasūtra 81-153 *passim*
Vaikhānasagṛhyasūtra 124
Vaikhānasaśrautasūtra 128
Vaitaraṇī river 159-177 *passim*
vaiśyas 112, 150
Vañjarā river 162-177 *passim*
Varadācārya 120
Varadarāja 54, 55
Varāhamihira 169
Vārāṇasi 13
varṇa 86, 92, 110
Varṣakriyākaumudī 153-177 *passim*
Vasiṣṭhasmṛti 81-153 *passim*
Vāsudevāsrama 117, 118, 119, 126, 137, 139, 140
Vātsyāyana 3
Veda (Vedam) 18
Vedānta Deśika 120
Veṇā river 160-177 *passim*
vidyādhana 42 ff., 185 ff.
Vidyāraṇya 118, 139, 140
Vieramarken 21 ff.
Vijñāneśvara 18, 111, 113, 143, 150, 187, 191
Vikhanas 107
Vikramāditya II, Calukya *yuvaraja* 6
viniścayamahāmātra, an officer of the court 4
Vīramitrodaya 144, 154
Visdelou, Claude de 17
Viṣṇuseṇa (Viṣṇubhaṭa) 5, 6, 7
Viṣṇusmṛti 81-153 *passim*
Viśvarūpa 150

Viśveśvara Sarasvatī 117, 118, 119, 126

Vivādabhaṅgārṇava 184

Vivādacandra 79

Vivādacintāmaṇi 144, 179, 188

Vivādaratnākara 144, 188

Vṛddhahārītasmṛti 144

Vṛddhavasiṣṭhasmṛti 50, 80

vṛttapattra 56

Vyāghrasmṛti 189

Vyavahāracintāmaṇi 66, 68, 79

Vyavahāramātṛkā 77

Vyavahāranirṇaya 54, 55, 56

vyavahārika, an officer of the court 4

Vyāsasmṛti 50, 58, 61, 76, 77, 183

witnesses 54, 73, 75, 146

Wilson, H. H. 12, 71

Winternitz, M. 100

Yādavaprakāśa 129

Yājñavalkyasmṛti 14, 49, 55, 67, 68, 76, 77, 81-153 *passim*, 153-177 *passim*, 181, 183, 184, 187

Yamunā river 160-177 *passim*

yati 81, 133, 137

Yatidharmasaṃgraha 117, 118

Yatidharmaprakāśa 117, 118, 136

Yatiliṅgabhedabhaṅgavāda 120

Yatiliṅgasamarthana 120

yāyāvara, holy householder 88, 110

Yoga 94, 95, 130, 135-6

Zeus 25

ERRATA

	FOR	READ
p. 4 line 5	*Pravenipusṭaka*	*Pravenipustaka*
p. 15 line 10	*Hindū*	*Hindu*
p. 15 line 27	Stockclein's	Stocklein's
p. 18 line 5	*Requetes*	*Requêtes*
p. 18 line 7	*requetes*	*requêtes*
p. 21 line 15	posses	possess
p. 23 line 18	neck.	neck,
p. 25 line 6	f rm	form
p. 25 line 30	m re	more
p. 28 line 35	Di sertation	Dissertation
p. 29 line 32	*a'*	*à*
p. 29 line 32	*Poëtes*	*Poètes*
p. 35 line 2	that	[delete]
p. 36 line 21	Lettrés	Lettres
p. 39 line 35	lates	latest
p. 44 line 17	reporti g	reporting
p. 49 line 20	ऽर्थंश्च	ऽर्थश्च
p. 50 line 23	चैब	चैव
p. 51 line 30	—शास्त्रविद:	—शास्त्रविद:
p. 52 line 4	अन्यबाघादि-	अन्यवाघादि-
p. 54 line 14	प्रत्यर्थीं	प्रत्यर्थी
p. 55 line 13	जयपत्राभाबात्	जयपत्राभावात
p. 55 line 14	तैंरेव	तैरेव
p. 56 line 4	Nīlkaṇṭha	Nīlakaṇṭha
p. 58 line 22	—शतथिद्व—	—शतभिताद—
p. 58 line 24	-र्थीं	-र्थी
p. 58 line 26	ऽर्थीं	ऽर्थी
p. 59 line 4	,,	”

	FOR	READ
p. 59 line 5	प्रत्यर्थितो	प्रत्यर्थिनो
p. 59 line 7	श्रात्रिथौ	श्रोत्रियौ
p. 59 line 10	—रुपनाथ—	—रूपनाथ—
p. 59 line 20	भौगकतु॑:	भोगकर्तुः
p. 63 line 32	gcnerations	generations
p. 64 line 22	UPA-	UPĀ-
p. 67 line 9	पद्य	सद्य
p. 69 line 31	this	his
p. 70 line 24	*cetī*	*ceṭī*
p. 70 line 25	*cetī*	*ceṭī*
p. 71 line 17	शास्त्रमाम्रित्य	शास्त्रमाश्रित्य
p. 73 line 13	—पारुष्य—	—पारुष्य—
p. 73 line 29	अभिचोक्ता	अभियोक्ता
p. 75 line 24	—व्रु—	—ब्रु—
p. 77 line 18	Jimutavāhana	Jīmūtavāhana
p. 82 line 14	any	my
p. 82 line 15	*Samnejāsa*	*Saṃñyāsa*
p. 96 line 34	*saśarïro*	*saśarīro*
p. 103 line 31	*Araṇyaka*	*Āraṇyaka*
p. 110 line 22	Manu [6.35 37]	Manu [6.35-37]
p. 110 line 28	Deutero-Bau [2.17.1 6]	Deutero-Bau [2.17.1-6]
p. 112 line 10	*dharmaśāst a*	*dharmaśāstra*
p. 120 line 23	*Ya iliṅgabheda...*	*Yatiliṅgabheda...*

6400

[illegible] देवी स्मारक पुस्तकालय ★ डाक्टर [illegible]

J. D. M. Derrett has recently retired as Professor of Oriental Laws at the School of Oriental and African Studies of the University of London.

Richard W. Lariviere is Assistant Professor of Sanskrit in the Department of Oriental and African Languages of the University of Texas, Austin.

Patrick Olivelle is Professor of Religious Studies at Indiana University, Bloomington.

Ludo Rocher is the W. Norman Brown Professor of South Asia Studies at the University of Pennsylvania, Philadelphia.

Richard G. Salomon is Assistant Professor of Sanskrit in the Department of Asian Languages and Literatures of the University of Washington, Seattle.

D. C. Sircar is the former Carmichael Professor of Ancient Indian History and Culture at Calcutta University.

ALSO PUBLISHED

Tantras, Their Philosophy & Occult Secrets—D. N. Bose & Hiralal Halder, 3rd Revised Reprint Ed. Demy 8vo, 1981	40.00
The Ramayana of Valmiki—Complete English Prose Translation—M. L. Sen, Reprint, 1978	110.00
Dharma in Hindu Ethics—Austin B. Creel, Demy 8vo, 1977	50.00
The Idea of Self—A study of Boddhist Philosophy in East & West Y. Hoffmann, Demy 8vo, 1980	65.00
Dream Symbolism in Sramanic Tradition—J. P. Sharma & Lee Siegel, Demy 8vo, 1981	40.00
Sri Aurobindo's Treatment of Hindu Myth—Jan Feys, Demy 8vo, 1983	30.00
Comprehensive History of Jainism—Asim Kumar Chatterjee, (In 2 vols.)	225.00
Introduction to Shankara—Rashbehary Das, Reprint, Demy 8vo, 1983	55.00
Non-dualism in Saiva & Sakta Philosophy—N. L. Kundu, Demy 8vo, 1983	50.00
Analytical Study of Abhidharmakosa—Sukomal Chaudhuri, Demy 8vo, Reprint edition, 1983	90 00
A Critical Study of Milindapanha—R. Basu, Demy 8vo, 1978	30.00